Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM OCTOBER 1, 1969

THROUGH DECEMBER 31, 1969

VOLUME 137

MacDONALD GALLION, Attorney General

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QUARTERLY REPORT

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ATTORNEY GENERAL

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From October 1, 1969

Through December 31, 1969

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from October 1, 1969 through December 31, 1969, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MacDONALD GALLION
Attorney General

MacDONALD GALLION

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John G. Bookout
Deputy Attorney General

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OPINIONS

October 2, 1969

Honorable David W. Crosland
District Attorney
Montgomery County Court House
Montgomery, Alabama 36104

Criminal Law—Cruelty to Animals—Conservation Department.

1. "Coon on a Log" contests held pursuant to Act No. 779, Acts of Alabama 1951, must be regulated and conducted in a manner not to constitute cruelty to animals in violation of Title 3, Section 11, Code of Alabama 1940.

2. "Coon on a Log" contests held pursuant to Act No. 779, Acts of Alabama 1951, must be restricted to demonstrating the ability of racoons to resist being taken from a log in water and cannot be extended to allow contests commonly called "Coon on a Pole," "Coon in a Hole," or "Coon in a Keg."

Opinion by Deputy Attorney General Bookout.

Dear Mr. Crosland:

This is in reply to your request for an official opinion dated September 30, 1969 which is as follows:

"Re: 'Coon on a log Contests'
Act No. 779, Reg. Session, 1951.

"Act No. 779, Regular Session Alabama Legislature, 1951, at page 1374 provides in Section 1 that certain sportsman associations may keep up to ten racoons caged and,
" 'to use the same for the purpose of demonstrating to its members and the general public the **respective abilities of the racoon to resist being retrieved or taken from a log in a lake, river or other body of water by a dog** and the ability of the respective dogs to retrieve racoons.' (Emphasis mine)

"Section 2 of said Act provides,

" 'that any association desiring to hold a demonstration as provided in Section 1 of this Act, **which is commonly called a "coon on a log" show or contest** shall first obtain a permit from the Director of Conservation—.' (Emphasis mine)

"The title of the Act provides that these associations may have in possession racoons and,

" 'to use them for the purpose of demonstrating the ability of racoons to resist **being taken from a log in waters to the shore by coon dogs** and provide for reasonable regulations thereof.' (Emphasis mine)

"It has been forcibly brought to my attention by numerous telephone calls, letters and conversations that some of these associations at these shows not only use racoons for demonstrations showing their ability to resist being taken from a log in water and the dogs' ability to retrieve the animal from such log, but also put the racoons in a hole in the ground allowing the dogs to dig them out, called 'coon in a hole,' tie the racoon by his hind legs on a pole for the dogs to drag down, called 'coon on a pole,' placing the racoon in an open keg on a tree limb for the dogs to pull out, called 'coon in a keg' and various other uses of the captive animal not provided for in the Act.

"Title 8, Section 84, Code of Ala., 1940, is the only other provision which provides for keeping racoons in captivity.

"Title 3, Section 11, Code of Ala., 1940 prohibits torturing, tormenting, mutilating or cruelly killing any animal.
"My question is:

" 'Does Act No. 779 restrict the use of a racoon to the demonstration of its ability to resist being taken from a log in waters and the ability of a dog to retrieve the racoon from such log?' "

It is my opinion that Act No. 779, Acts of Alabama 1951, permits demonstrations commonly called, "Coon on a Log" contests, but such contests must be strictly limited to demonstrating the ability of racoons to resist being retrieved from a log in a body of water and the ability of the dogs to retrieve such racoons.

Act No. 779, supra, does not expressly permit any other type contests between dogs and racoons such as those commonly called, "Coon on a Pole," "Coon in a Hole," or "Coon in a Keg" contests. That Act is an exception to the general law of this State relating to keeping wilder game animals in captivity and therefore must be strictly construed. See Title 8, Section 84, Code of Alabama 1940.

The provisions of Act No. 779, supra, do not give any person or association "carte blanche" to violate the laws of Alabama which prohibit cruelty to animals. Neither does that Act empower the Director of Conservation to authorize any such contest not conducted in a body of water.

It is my further opinion that even though such a contest is held in compliance with Act No. 779, the sponsors and owners of dogs participating therein may still be subject to prosecution if the dogs are allowed to torture, torment, mutilate or cruelly kill a racoon used in such contest. Title 3, Section 11, Code of Alabama 1940 provides for the criminal prosecution of any person who either tortures, torments,

mutilates or cruelly kills any animal, or who causes or procures such treatment, or who has charge or custody of any animal and inflicts unnecessary cruelty upon it.

Cruelty to animals is a criminal offense and the State law prohibiting such inhumane treatment should be strictly enforced.

Very truly yours,

MacDONALD GALLION
Attorney General

October 14, 1969

Honorable William J. Benton
District Attorney
26th Judicial Circuit
Russell County Courthouse
Phenix City, Alabama

Bail—Bonds—Statutes—Courts—Opinions Overruled.

1. The surety for a bail bond may go outside the State of Alabama and arrest his principal for the purpose of surrendering him to the court wherein the bond was given so long as said surety complies with the laws, if any, of the asylum state.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

You orally requested me to give my opinion on the question of whether bail could go into another state and retrieve his principal for the purpose of surrendering said principal to the court to prevent a forfeiture of the undertaking.

This office, in two opinions dated February 17, 1940, and July 11, 1955, one to J. Foster King, Sheriff, Tuscaloosa County, Alabama, and the other to Frank B. Embry, Circuit Judge, Thirtieth Judicial Circuit, held that a bail bondsman could not go outside the state to retrieve his principal for the purpose of surrendering him to the court for further proceedings.

The theory of these two opinions was based on two Alabama Supreme Court cases, **Gray v. Strickland,** 163 Ala. 344, 50 So. 152, and **Nicholson v. Killpatrick,** 188 Ala. 258, 66 So. 8, wherein Judge Anderson in **Gray v. Strickland,** supra, said:

> "Under the common law the sureties upon a defendant's bail had the unquestioned right to arrest him at pleasure and surrender him into the hands of the law, and this could be done

without the issuance of process. 3 Am. & Eng. Ency. Law, 708; Bearden v. State, 89 Ala. 21, 7 So. 755; State v. Crosby, 114 Ala. 11, 22 So. 110; Cain v. State, 55 Ala. 170; Hawk v. State, 84 Ala. 466, 4 So. 690. Section 6351, Code 1907, provides for the discharge of the sureties by a surrender of the principal, and also provides for the arrest of the defendant upon a certified copy of the undertaking. Therefore, under the statute, the sureties have the right to procure their discharge by surrendering the principal at any time before a default, just as they had under the common law; the only change being that the arrest must be made upon a certified copy of the bond. The statute does not give any additional rights or powers, but really qualifies the common-law right of arrest, and the method, as prescribed by the statute, must be exclusive. It gives no additional right to arrest, and cannot be said to be in aid of or cumulative to the common law in this particular, and to give it any meaning or operation whatever, it must be construed as confining the right of arrest by the sureties in the manner therein required. To hold otherwise would render the statute meaningless as to the requirement in making arrests, and in effect stultify the lawmakers. David v. Levy & Son, 119 Ala. 241, 24 South. 589."

The conclusions set out in the opinions of this office mentioned above are to the effect that the statute, now Title 15, Section 209, Code of Alabama 1940, as Recompiled 1958, restricted the right of a bail bondsman to arrest his principal to the boundaries of the State of Alabama, and that he now could not go outside the State to capture the principal as he was privileged to do under the common law.

Subsequent to these two opinions this office, on September 26, 1966, rendered an opinion to David Crosland, District Attorney, Fifteenth Judicial Circuit of Alabama, holding that a bail bondsman could arrest his principal in another state for the purpose of surrendering him to the court wherein the bond was made, provided the laws of that state did not prohibit such an arrest by the bail or did not provide for a different mode of proceeding for returning the principal to the state where the bond was executed.

So the question naturally arises as to which position we are going to adhere to in answering your question.

The U. S. Supreme Court in the case of **Taylor v. Taintor,** 16 Wall. 366-377, 83 U.S. 287, held, in part, as follows:

"When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge, and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another state;

> may arrest him on the Sabbath; and if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the rearrest, by the sheriff, of an escaping prisoner." [Cases cited.]

The cases of **Fitzpatrick v. Williams,** 46 F. 2d 40, **U.S. v. Burl, et al.,** 67 F. Supp. 583, and **U.S. v. Trunko,** 189 F. Supp. 559, followed the holding in the **Taylor v. Taintor** case, supra.

However, in the case of **McCaleb v. Peerless Ins. Co. & Vinci,** 250 F. Supp. 512, the U. S. District Court for the State of Nebraska had this to say:

> "There is no doubt that a bondsman has the power to arrest and may do so in any state into which his principal may have fled in the absence of any statute denying that right. 73 A.L.R. 1370 and cases cited therein. We think there is no question that Vinci, the agent, had the right to go to California and arrest his company's principal, McCaleb. However, all of the cases we have read which allow the bondsman to arrest his principal have added the requirement that such arrest be for the purpose of surrendering the principal to the proper authorities for appearance before the court which allowed the bond. State v. Liakas, 165 Neb. 503, 86 N.W. 2d 373; State v. Helgerson, 59 S.D. 516, 241 N.W. 325; United States v. Burl, D.C., 67 F. Supp. 583; Taylor v. Taintor, 16 Wall. 366, 18 U.S. 366, 21 L.Ed. 287; 3. A.L.R. 188; 73 AL.R. 1370. The bondsman has the right to arrest, but only for the purpose of surrender and exoneration of his bond.
>
> "One purpose of allowing a person his liberty by the use of a bond is to prevent such person from being imprisoned for an unnecessary length of time without the Court losing the assurance that such person will appear in court at the appointed time. The bondsman has a duty signified by his written contract to present his principal before the court. This is the basic reason for the rule which gives the bondsman the right to pursue and arrest his principal. Fundamental interests of justice and society require that a surety in a criminal case be given greater authority than the other types of sureties and bondsmen. But this authority is conditioned on the recognition of his duty to the court to present the principal before the court. If this fundamental condition is not obeyed, the entire purpose for which bonds are given and collaterally the rule vesting broad authority in the bondsman will be effectively thwarted * * *."

The question which now presents itself for answer is whether the bondsman is restricted to arresting his principal in Alabama, or, if not so restricted, is he free to go into any state in the Union and take a

principal and return him to the State of Alabama for the purpose of surrendering him to a court without complying with the laws of the asylum state or the State of Alabama?

First, I do not believe that the Supreme Court of Alabama in **Gray** and **Nicholson,** supra, intended to imply that an Alabama bail bondsman could not go outside the State for the purpose of returning his principal to be surrendered to the proper Alabama court.

And, second, I cannot escape the conclusion, particularly in the face of the pronouncements in **Taylor v. Taintor,** supra, and the other cases previously cited, that an Alabama bondsman has the authority to go into another state and arrest or take into custody his principal for the purpose of surrendering him to the proper Alabama court so long as this procedure does not run afoul of any legal prohibition of the asylum state or contravene any other procedure which is required to be followed in such circumstances. **McCaleb v. Peerless Ins. Co. & Vinci,** supra.

Therefore, it is my opinion that an Alabama bail bondsman may go into another state and take into custody his principal for the purpose of surrendering him to the proper court in Alabama provided bail conforms to the laws, if any, of the asylum state regulating this sort of proceeding.

The opinions rendered to J. Foster King and Frank B. Embry are hereby overruled.

Very truly yours,

MacDONALD GALLION
Attorney General

October 15, 1969

Honorable J. Frank Howell
Mayor, City of Piedmont
Piedmont, Alabama

Schools—Buildings—Real Estate.

1. The question of reversion of title to school property which has been abandoned for school purposes generally depends on the provisions of the deed under which the real estate was originally conveyed for school purposes.

2. In the case of lands conveyed to a city on which school buildings have been erected, but such buildings have subsequently been abandoned for school purposes, the city may devote said property to other uses or dispose of said property as it sees fit.

Opinion by Assistant Attorney General Hall.

Dear Sir:

Your request for an official opinion bearing date of January 29, 1969, is as follows:

> "The City of Piedmont is one of the cities affected by recent court decisions resulting in the closing of a Colored school, which will be vacated at the end of the current school year.
>
> "The land on which these school buildings were built is owned by the City of Piedmont and improvements were financed with 5 mill school tax and in one case, by State funds.
>
> "The question has arisen as to ownership and disposition of this property when it ceases to be used for school purposes. At your earliest convenience, we would appreciate your opinion as to whether this property will revert back to the City when the School vacates same during the coming year."

Subsequent to the receipt of your letter, I wrote you on January 31, 1969, requesting that you send me further information with respect to whether the property on which the school was erected was deeded to the City of Piedmont or whether it was deeded to the Board of Education of the City of Piedmont.

On February 4, 1969, you sent me copies of certain documents and copies of certain deeds, which, according to your letter had to do with the conveyance of the property on which the school is located.

On February 7, 1969, I requested that you furnish me with copies of any agreements or other documents indicating agreements between the City of Piedmont and the City or County Board of Education pertaining to this property.

On October 6, 1969, you wrote me a letter stating that you have searched all of your records and that there are no agreements, deeds, documents, or contracts as to the disposition of this property.

Among the documents furnished to me, I find a copy of a warranty deed dated April 27, 1946, purportedly made by John R. Barlow and his wife, Adelaide McC Barlow, Blanche B. Formby, a widow, Mary B. Harris and her husband, S. H. Harris, and Margaret B. Thompson and her husband, C. W. Thompson, who are recited to be all the heirs of J. H. Barlow, deceased. This deed purports to convey to the City of Piedmont Lots 1 to 5, inclusive, in Block 111, Lots 3 and 4 in Block 110, Lots 2 and 5 in Block 110, and Lot No. 1 in Block 110, as shown on a map of the Barlow estate recorded in Plat Book C, Page 98, in the office of the Judge of Probate in Calhoun County, Alabama. This deed purports to convey the fee simple title to said property without any reservations or reversionary clauses.

A statutory warranty deed dated the _____ day of August, 1949, made by Mrs. W. A. Acker, a widow, Dorothy Acker McIntyre and her

husband, James McIntyre, purports to convey to the City of Piedmont Lots 4 and 5 and the South 20 feet of even width of Lot 6 in Block 87 and 45 feet of even width off of the west side of Lots 2 and 3 in Block 86, according to the map of the City of Piedmont, Alabama, of the property belonging to Alabama Land and Mineral Company, prepared by Sid Smyth, November 19, 1904. This deed conveys to the City of Piedmont the fee simple title to the described property.

On July 19, 1949, the City of Piedmont adopted a resolution approving the purchase from Mrs. W. A. Acker as next friend and mother of James Doyle Acker and Martha Joe Acker of the same property. This resolution recites that "the property above-described as belonging to the estate of W. A. Acker, deceased, is desirable for school purposes to build a public school for Negro children of the City of Piedmont, Alabama, and the Council has been requested by a duly adopted resolution by the school board to acquire said property."

Among the documents furnished me is what purports to be a copy of a decree of the Circuit Court of Calhoun County, Alabama, in Equity, in a case styled **Mrs. W. A. Acker, as next friend and mother of James Doyle Acker and Martha Joe Acker, Minors, Complainant, vs. Dorothy Acker McIntire.** This decree recites that a petition had been filed praying for the sale and the interest of said minors in certain real estate described in the petition. The order recites that the price offered by the City of Piedmont for said property is a fair and reasonable market value of said real estate, and that it was to the interest of the wards that their interest in and to said real estate be sold. The order authorized and directed Mrs. W. A. Acker, as the mother and next friend of said minors to make a conveyance of the interest of said minors in the real estate by executing and delivering to the City of Piedmont, Alabama, a statutory warranty deed, upon the City's fully complying with its offer.

On the _____ day of August, 1949, Mrs. W. A. Acker, as mother and next friend of James Doyle Acker and Martha Joe Acker, executed a statutory warranty deed conveying to the City of Piedmont the described property.

On the _____ day of July, 1969, Mrs. W. A. Acker signed an instrument, as the owner of all the property abutting on said streets and alleys, vacating said streets and alleys in accordance with Article 2, Chapter 32, Title 56 of the Code of Alabama 1940, and on the _____ day of July, 1949, the mayor and Council of the City of Piedmont adopted a resolution assenting to the closing and vacation of said streets and alleys and confirming the same.

In none of these deeds are there any reservations or reversionary clauses, although the resolution adopted July 19, 1949, recites that the property being acquired from the estate of W. A. Acker, deceased, is desirable for school purposes to build a public school for Negro children of the City of Piedmont, Alabama.

There also appears among the papers sent to me a copy of an order dated August 8, 1949, signed by the Judge of Probate of Calhoun County condemning in the name of the City of Piedmont, Alabama, certain lands described in an application therefor, being the property of Clifford Alexander, Sarah Marshall, Daisy Pitts, and Lorene Thomas, as trustees of Fire Baptized Holiness Church of God of America "for the uses and purposes set forth in said application."

Title 52, Section 160, Code of Alabama 1940 (1927 School Code, Section 200), provides that all property, real and personal and mixed, now held or hereafter acquired for school purposes shall be held in trust by the City Board of Education for the use of the public schools of the city.

In my opinion, since the property has been abandoned for school purposes, the trusteeship of the City Board of Education has ceased and the title to the property is vested in the City of Piedmont, which can devote to other uses or dispose of it as it sees fit. However, this opinion is not to be taken s a certificate of title but merely an expression of opinion which may or may not be acceptable to the prospective purchaser or his title attorney.

Very truly yours,

MacDONALD GALLION
Attorney General

October 16, 1969

Honorable Delma E. Bowers
Tax Assessor, Conecuh County
Evergreen, Alabama

Officers and Offices—Supernumerary Tax Assessor—Determination of Total Income.

Fees and commissions paid to a tax assessor or tax collector by a municipality must be included in his total income for purpose of the four percent contributing distribution.

Opinion by Assistant Attorney General Turner.

Dear Sir:

I have your request for an opinion of this office which is as follows:

"My books are presently being audited and the auditor insists on charging me four percent retirement on my city commissions.

"According to my understanding, city commissions were not to be included in the gross income under Act 755 wherein it is stated that municipalities are excluded from the operation of the act. No money is paid to them by the official and no money is paid by them upon retirement. Therefore, city commissions cannot be included.

"I might state that I have never paid retirement on city commissions in the past and it has never been questioned by anyone other than the present auditor.

"Please give me an official opinion on this at your earliest convenience."

After a review of Act No. 755, Acts of Alabama 1967, Volume II, page 1609, it is my opinion that your inquiry must be answered in the affirmative.

Section 4 of the Act provides for the contributing procedure and states that if the official is compensated by fees and commissions, the tax collector shall deduct from the money paid to the tax collector and to the tax assessor an amount equal to four percent **of the sum paid** and **said amounts shall be distributed** immediately to the State, county and all subdivisions and agencies thereof, **except municipal corporations** to which ad valorem taxes are paid.

Section 3 of the Act establishes the payment procedure to the official or supernumerary status and states that the sum paid to him shall be deducted on a pro rata basis from ad valorem payments due to be distributed to the State, county and all subdivisions and agencies thereof **except municipalities.**

Thus, if the official is paid a fee or commission from a municipality this should be considered part of "the sum paid" to the official and four percent of it collected from the official and included in the total distributed to the State, county and all subdivisions and agencies thereof except municipal corporations which entities shall, in turn, provide the salary of the official when he becomes a supernumerary official.

Very truly yours,

MacDONALD GALLION
Attorney General

October 22, 1969

Dr. James L. Cash, Jr.
President, Alabama State Board of Optometry
12 Broad Street
Selma, Alabama 36702

Optometrists—Physicians and Surgeons.

The examination of the human eye for the purpose of ascertaining any departure from the normal, measuring its functioning powers and adopting mechanical means for the aid thereof may only be performed by duly licensed optometrists, physicians, surgeons or oculists. Title 46, Sections 190-213, Code of Alabama 1940.

Opinion by Deputy Attorney General Bookout.

Dear Dr. Cash:

Your request for an official opinion is as follows:

"Will you please provide our Board with the answer to the following question:

"Is an unlicensed optician or any person who is not a duly licensed optometrist or physician in Alabama, practicing Optometry unlawfully when he performs any, all or some combinaton of the following acts in adapting contact lenses to the eyes of a patient?

"1. Examine the patient's eyes externally to determine whether the patients lid structure is normal or a diseased condition exists.

"2. What the patients vision is uncorrected and correctable to.

"3. To measure the eye (cornea) with an ophthalmometer for the exact curve.

"4. To refract the eye for the correct prescription (lense power).

"5. To determine the power, size, base curves, optical zone, tint etc. of lenses.

"6. To actually put the lenses into the patient's eyes.

"7. To determine whether the lenses fit too loose, too tight, etc. using staining methods, magnification with a slit-lamp, etc.

"8. Checking the patient's vision to see if normal, using wall chart or projector.

"9. Instructing the patient on the method of insertion and removal of lenses.

"10. Having the patient return weekly for a month to six weeks to check lenses, the cornea for abrasions, and visual acuity of eyes.

"Some instruments sometimes used to fit or check contact lenses on a patient are the ophthalmascope, slit-lamp (biomicroscope), ophthalmometer or keratometer, radioscope, perimeter and a tonometer."

Title 46, Section 190, Code of Alabama 1940 is as follows:

"The practice of optometry is defined to be the examination of the human eye for the purpose of ascertaining any departure from the normal, measuring its functional powers and adopting mechanical means for the aid thereof."

Section 191, in pertinent part, is as follows:

"It shall be unlawful for any person in this state to engage himself in the practice of optometry or to hold himself out as a practitioner of optometry or attempt to determine by an examination of the eyes the kind of glasses needed by any person, or to hold himself out as a licensed optometrist when not so licensed, or hold himself out as able to examine the eyes of a person for the purpose of fitting the same with glasses, excepting those hereinafter exempted, unless he has first fulfilled the requirements of this chapter, and has received a license or certificate from the state board of optometry; . . . ."

Section 208 of Title 46 exempts only licensed physicians, surgeons or oculists from the licensing requirements for optometrists.

The question, however, remains factual as to whether or not the activities described in your request amount to the practice of optometry. Obviously, under Alabama law, if such activities do amount to the practice of optometry, then only a licensed optometrist, physician, surgeon or oculist may perform such services.

I have been unable to find a decision of an Alabama Court in point. There is, however, ample authority from other jurisdictions bearing on this point in question. Likewise, I find that the Attorneys General from at least 12 other states have rendered official opinions on most of the practices listed in your request.

The most recent court decision in point is from our sister state of Mississippi. The Mississippi statutes, relating to the practice of optometry, are almost identical to our statutes on the subject. Neither Alabama nor Mississippi have laws governing the practice of opticians.

The Supreme Court of Mississippi on December 7, 1964, in the case of **State Board of Optometry vs. Charles Chester, d/b/a Meridian Optical Dispensary,** 169 So. 2d. 468, held that:

"We are of the opinion that as long as the dispensing optician fabricates, fits, and inserts contact lenses in the eyes in accordance with the prescriptions of an examining optometrist, ophthalmologist, oculist or physician, and requires the patient to return to the examining optometrist, ophthalmologist, oculist

or physician in order that the writer of the prescription may determine whether or not the prescription has been properly filled and the contact lenses properly measured, fabricated and fitted, such optician is not engaged in the practice of optometry within the meaning of the statute. As we interpret the evidence from this record, there is always the possibility that contact lenses may cause irritation of the eye, regardless of who fabricates or fits them. The lenses may scratch the cornea, and unless the scratch is treated, it may cause an ulcer of the cornea. The optometrist, ophthalmologist, oculist or physician, according to the evidence, routinely ascertains whether or not such a scratch exists by the use of certain fluoresceins, which are dyes. The use of such dye, according to the evidence, is necessary because often small scratches which irritate the eye cannot be discovered in any other way. Neither an optician nor an optometrist is permitted to use any medicine to treat the eye in order to relieve irritation or for any other trouble which requires the use of drugs.

"The appellant objects to the dispensing optician being permitted to 'insert contact lens into the eye.' It contends this is a hazardous act and one that should be done by only an optometrist, physician, ophthalmologist or oculist. Even so, the insertion of contact lenses into the eye and the removal of the lenses therefrom are merely routine procedures by the wearer once the lenses are properly fabricated and fitted. **High v. Ridgway's Opticians,** 258 N.C. 626, 129 S.E. 2d 301 (1963). We feel that as long as appellee does what under the prescription amounts to no more than a mechanical adjustment and fitting under a doctor's or optometrist's supervision and control, he is practicing neither optometry nor medicine. **State Board of Registration for Professional Engineers v. Rogers,** 239 Miss. 35, 120 So. 2d 772 (1960)."

The Attorney General of Oklahoma in an opinion dated April 23, 1960 held, in pertinent part:

"It is the opinion of the Attorney General that the fitting of contact lenses can legally be done only by a duly registered optometrist, or licensed physician and/or surgeon of medicine, under the laws of the State of Oklahoma, and that it is unlawful for any person not so registered or licensed to fit contact lenses to the human eyes of another person, either with or without a prescription."

The Attorney General of Montana, on November 23, 1959, held:

"It is therefore my opinion that only duly licensed medical practitioners, commissioned officers of the U. S. armed forces whose regular duty includes eye care and treatment and duly licensed optometrists may prescribe and fit contact lens or lenses or dispense ophthalmic lens or lenses in this state."

Likewise, the Attorney General of Kansas, on April 2, 1962, ruled that:

> "Our conclusion is that only a duly licensed optometrist, physician or surgeon (65-1508) is authorized to fit and adapt contact lens to the human eye. Although the grinding of the prescription into the lens does not involve the practice of optometry, and thus could be done by an optical dispenser, it is apparent that testing of the eyes to determine the need for visual correction, the fitting of the lens to the eye, and the writing of the prescription are all part of the practice of optometry and may be done only by licensed optometrists, physicians and surgeons under the Kansas laws and statutes."

The Attorney General of Michigan on August 23, 1946 also ruled:

> "It is our opinion that the measuring of the eye and the adaptation of lenses thereto, whether contact lenses or the more customary types, is a function of licensed optometrists, if the procedures for fitting contact lenses are by means other than the use of drugs, medicines, or surgery."

A similar opinion was again rendered by the Attorney General of Michigan on May 14, 1953. Again on January 13, 1961, that office reaffirmed its opinions of 1946 and 1953 and stated that " . . . the fitting of contact lenses constitutes the practice of optometry, and that such practice may only be engaged in by a person who is appropriately licensed in accordance with the terms of the optometry act."

The Attorney General of Illinois, on September 28, 1962 in a lengthy opinion, said that the Illinois statute defining the practice of optometry included:

> " . . . examination of the eye for the purpose of ascertaining any departure from the normal eye; the measuring of its powers of vision and adapting lenses or prisms; the taking of impressions of the eyeball for the purpose of casting contact lenses; the decisions with respect to corrective properties or qualities to be incorporated in the lens for the purpose of providing the proper refractive qualities; or the making of adjustments or the fitting of the lens to the eye . . . ."

Similar opinions have been rendered by the Attorneys General of Indiana, California, Oregon, New Jersey, Utah, Wisconsin and Colorado.

According to all the evidence set out in the cases and opinions dealing with the subject, it appears that in order to properly fit contact lenses, a person must have a high degree of professional skill and knowledge of the anatomy and physiology of the eye. Cf. Opinion of Attorney General of Kansas, No. 62-40, April 2, 1962 and **State of Oregon, ex rel. vs. Jack Kuzirian,** 365 P. 2d 1046 (1961).

The Legislature by enacting Title 46, Chapter 11, Code of Alabama 1940, relating to the practice of optometry, intended to place profes-

sional eye care in the hands of only duly licensed optometrists, physicians, surgeons and oculists. That law was passed for the protection of the public and unlicensed persons may not perform any activity specified in Sections 190 or 191 of Title 46, supra.

As to your first activity listed in your request, the Alabama Supreme Court in the case, **Hampton v. Brackin's Jewelry & Optical Co.,** 237 Ala. 212, 186 So. 173, held in part as follows:

> "Thus we see that the duties of the optometrist do not require, or even authorize, diagnosis and treatment of eye diseases.
>
> "We further see that the statute, Section 2890, in legal effect, prohibits any optometrist from administering drugs in any form, to practice, or claim to practice, medicine, or surgery in any sense, or to use any title or appellation intended or calculated to indicate the practice of medicine or surgery.
>
> "Clearly, then, the duty resting upon the optometrist was to make examination of the plaintiff's eyes for the 'purpose of ascertaining any departure from normal (having reference to vision), measuring its functional powers, and adapting mechanical means for the aid thereof.' If, however, in the performance of those duties, it would be apparent to a skillful optometrist that there existed in the eye under examination a disease or malformation, we would not say that it would not be his duty to so advise his patient, so that proper medical or surgical treatment might be had."

It is, therefore, my opinion that each activity or combination of activities set out in examples 2 through 10 of your request would come within the legal definition of the practice of optometry in Alabama and may only be performed by a duly licensed optometrist, physician, surgeon or oculist.

Very truly yours,

MacDONALD GALLION
Attorney General

October 24, 1969

Honorable J. P. King
Judge of Probate
Blount County
Oneonta, Alabama

National Guard—Military Department—License Tags—Exemptions.

The exemption from license tax and registration fee provided for in Act No. 739, Acts of Alabama 1969, on "passenger vehicles" applies to both pick-up trucks and automobiles.

Opinion by Deputy Attorney General Bookout.

Dear Judge King:

Your request for an official opinion dated October 6, 1969 is as follows:

> "Act No. 739 of the 1969 Regular Session of the Legislature exempted from the regular license tax one passenger vehicle owned and operated by each active member of the National Guard and Reserve Forces and other enumerated servicemen.
>
> "Does the term 'passenger vehicle' include pick-up trucks as well as automobiles, as used in that Act?"

Title 51, Section 692, Code of Alabama 1940, as amended by Act No. 580, Acts of Alabama 1967, attempts to define various types of vehicles for licensing purposes. It is noted that the term "private passenger automobile" is defined to include every motor vehicle designed primarily for the transportation of nine persons or less, except motorcycles, motor vehicles for hire, trailers and semitrailers, self-propelled campers or house cars, and "pick-ups" or "pick-up trucks."

Had the Legislature used the term "private passenger automobile" in Act No. 739, supra, as it had previously been defined in the revenue laws, then pick-up trucks probably would not have been exempted in Act No. 739. However, such was not the case.

The 1969 Act in question does not exempt only "private passenger automobiles." It exempts, in specific wording, "passenger **vehicles** owned and operated by . . ." guardsmen and others to whom the Act applies. [Emphasis supplied.] By use of the term "vehicle" rather than "automobile" a broader meaning must be given to the exemption.

Title 51, Section 692, supra, provides in part:

> " 'Motor vehicle' means every vehicle which is self-propelled, every vehicle which is propelled by electric power from overhead trolley wires, and every vehicle that is drawn by a self-propelled vehicle, including every trailer and semitrailer."

Therefore in combining the words "passenger" and "vehicle," it is my opinion that the Legislature intended to exempt motor vehicles which are primarily used for private transportation of passengers. Thus, a pick-up truck privately owned and operated by any person enumerated in Act No. 739, supra, would be exempt from the license tax and registration fee levied on automobiles and motor vehicles.

To hold otherwise would discriminate against guardsmen and other servicemen whose only transportation is a pick-up truck. It is noted that many such persons, especially in rural areas of the state, own and operate a pick-up truck as their only means of family transportation.

In looking at the legislative history of Act No. 739, supra, it appears that the Legislature intended to make available one $13 license tag each year, free of charge, to each of the guardsmen, reservists and other servicemen specified in that Act.

Our interpretation of Act No. 739 is also supported by the fact that in providing for distinctive license plates for members of the National Guard, the Legislature specifically enumerated that pick-up trucks are included in the definition of a "personally owned, private passenger vehicle," for the purpose of obtaining such distinctive license plates. Act No. 308, Acts of Alabama 1955, as amended by Act No. 253, Acts of Alabama 1959.

This opinion does not extend to passenger vehicles for hire or to vehicles which require a license in excess of that required for automobiles and pick-up trucks specified in Title 51, Section 697, Code of Alabama 1940, as amended by Act No. 580, Acts of Alabama 1967.

Very truly yours,

MacDONALD GALLION
Attorney General

October 29, 1969

Honorable Morris Moatts
President
Alabama Association of Circuit Court Clerks and Registers
Courthouse
Clanton, Alabama

Costs and Fees—Statutes—Constitutionality.

Act No. 999, Acts of Alabama 1969 discussed.

Opinion by Assistant Attorney General Morrow.

Dear Sir:

Your request for an opinion of this office bearing date of October 2, 1969 is as follows:

"The Circuit Clerks of Alabama have a number of questions in regard to House Bill #288 of the Regular Session of the Legislature, 1969, which we desire an official opinion from your office.

"1. On what date did H.B. #288, §9, (Regular Session of the Legislature 1969) go into effect?

"2. Does this statute apply to cases placed on the docket before the effective date or only to violations that take place after the effective date?

"3. When a defendant is found guilty of a misdemeanor in a lower court and appeals to the Circuit Court, should he be taxed again if found guilty in Circuit Court?

"4. Are moving traffic violations set out as a separate category from misdemeanor offenses for the purpose of assessing this tax?

"5. What is a moving traffic violation? Is parking on highway, under Title 36, §25, a moving traffic violation? If not, does the charge of parking on Highway impose additional cost of $5.00 for a misdemeanor, or is this charge to be treated as violation related to parking of vehicles?

"6. If a nolle prosequi is entered, what cost should be assessed?

"7. Will the fact that each peace officer has a pecuniary interest in the retirement fund cause the statute to be unconstitutional?

"8. Where should the revenue collected as a result of this statute be remitted?

"9. Is the amount collected by the Circuit Court under this statute subject to the 5% deduction as provided by Title 11, §22?

"10. Is the $1.00 cost imposed by H.B. #288, §9, (Regular Session of the Legislature 1969) an addition to the $1.00 penalty imposed by Act No. 244, §1, General Acts of Alabama, Special Session 1964?

"11. Act #592, Senate Bill No. 699, approved by the Governor on August 29, 1969, amending Section 7 of Act No. 163, House Bill No. 168 (approved March 30, 1965), reads as follows:

'* * * Also, the Clerk of the Court shall deduct for the use of the County twenty percent of any sum or sums collected for and remitted to the State.' Will the above twenty percent be deducted from the Alabama Peace Officer's Annuity and Benefit Fund, which are collected in the Intermediate Court of Cullman County before remitting to the State Treasurer?"

"1. On what date did H.B. #288, §9, (Regular Session of the Legislature 1969) go into effect?" Act No. 999, Acts of Alabama 1969 was signed by Governor Albert P. Brewer on September 12, 1969. It is my opinion that the bill became effective as law on the above-stated date. Section 23, Act No. 999, supra.

"2. Does this statute apply to cases placed on the docket before the effective date or only to violations that take place after the effective date?" Section 9 of Act No. 999, supra, states that the cost is taxed on any case, "wherein the defendant is **adjudged guilty** or **pleads guilty** or wherein a **bond is forfeited** and the result of the forfeiture is a final disposition of the case or wherein **any penalty is imposed,** there is hereby imposed an additional cost of court in the amount of . . ." It is my opinion that anytime after September 12, 1969 that the above events take place, concerning a case that is covered by the enumerated categories, then the additional court cost is taxed. The case could have been on the docket before September 12, 1969, but it is the final disposition of the case that determines when the cost is assessed.

"3. When a defendant is found guilty of a misdemeanor in a lower court and appeals to the Circuit Court, should he be taxed again if found guilty in Circuit Court?" From a careful reading of the statute it appears that a defendant is only to be taxed one time for each violation for which he is convicted. As a practical matter, court costs should not be paid until after the conviction is affirmed on appeal. If the conviction is reversed, there should be no court costs assessed.

"4. Are moving traffic violations set out as a separate category from misdemeanor offenses for the purpose of assessing this tax?" The way the statute is written causes some ambiguity as to the amount to tax moving traffic violations. The Legislature set up three different amounts to be taxed on three different categories of offenses. It is my opinion that moving traffic violations should be taxed only $1.00 and should be set up separately from other misdemeanor offenses.

"5. What is a moving traffic violation? Is parking on highway, under Title 36, §25, a moving traffic violation? If not, does the charge of parking on Highway impose additional cost of $5.00 for a misdemeanor, or is this charge to be treated as violation related to parking of vehicles?" A moving traffic violation is a traffic violation that takes place while a vehicle is in motion. It must be understood that just because a vehicle is moving does not make every offense committed while it is moving a traffic violation. If a felony is committed while the vehicle is moving, it is a felony, not a traffic violation.

Parking on the highway, Title 36, Section 25, Code of Alabama 1940 (Recompiled 1958), is not a moving traffic violation and cannot be taxed as a misdemeanor violation. Parking violations are specifically exempted from the tax in Section 9 of the bill.

"6. If a nolle prosequi is entered, what cost should be assessed?" The statute states that it takes effect only, ". . . wherein the defendant is adjudged guilty or pleads guilty or wherein a bond is forfeited and the result of the forfeiture is a final disposition of the case or wherein any penalty is imposed, there is hereby imposed an additional cost of court in the amount of . . . ." Section 9, Act 999, supra (Regular Session of Legislature 1969).

Since the statute clearly states what type of case disposition causes it to come into effect and a nolle prosequi is not listed as one of the case dispositions causing it to come into effect, it is my opinion that no costs should be taxed when a case is "nol prossed."

"7. Will the fact that each peace officer has a pecuniary interest in the retirement fund cause the statute to be unconstitutional?" A peace officer has no interest in each individual cost which is assessed, but his interest is in the whole fund. This interest in the fund can only accrue after a stated length of time and may not be in existence at the time of each arrest. A peace officer merely presents evidence of the violation and has no influence over the decision rendered by the judge. For these reasons it is my opinion that the interest the peace officers have in the fund will not cause the statute to be unconstitutional.

"8. Where should the revenue collected as a result of this statute be remitted?" Section 9 of this statute clearly states that revenue collected under this statute is to be remitted to the Executive Director of the Board. But, since the Board positions have not been filled and it appears that the process of filling the positions will be lengthy, it is my opinion that the revenue collected should be remitted to Mr. Roy Sanders, Comptroller, State of Alabama, for the benefit of the Alabama Peace Officers Annuity and Benefit Fund. This process can be followed until the Board makes a decision to the contrary.

"9. Is the amount collected by the Circuit Court under this statute subject to the 5% deduction as provided in Title 11, §22?" Title 11, Section 22 of the Code of Alabama 1940 (Recompiled 1958), reads as follows:

> "The clerks and registers of the several circuit courts of the state of Alabama shall receive **five percent** of any **sum** or sums collected by such clerk or register **for the state of Alabama,** as compensation for the collection and remittance of the same, the said percentage to be deducted by such clerk or register making the collection from such sum or sums collected." (Emphasis Added.)

The collection of court costs is part of the **"sum"** of all costs and penalities collected by clerks and registers and the costs assessed by Section 9, Act 999, supra, are collected **"for the state of Alabama."** Therefore it is my opinion that the costs collected are subject to the 5% deduction provided in Title 11, Section 22, supra.

"10. Is the $1.00 cost imposed by H.B. #288, §9, (Regular Session of the Legislature 1969) an addition to the $1.00 penalty imposed by Act No. 244, §1, General Acts of Alabama, Special Session 1964?" Act No. 244, Section 1, General Acts of Alabama (Special Session 1964), reads in part as follows:

> "In addition to all other fines, fees, costs and punishments now prescribed by law there shall be imposed or assessed an additional **penalty** of one dollar ($1.00) . . . ." **(Emphasis added.)**

Act 999, Section 9 (Regular Session of Legislature 1969), reads in part as follows:

> ". . . there is hereby imposed an **additional** cost of court in the amount of . . . ." (Emphasis added.)

As can be seen by reading Act 999, Section 9, supra, the cost imposed is **additional** and it is my opinion that the cost in Act 999, Section 9, supra, is in addition to all costs and penalties imposed before.

"11. Act #592, Senate Bill No. 699, approved by the Governor on August 29, 1969, amending Section 7 of Act No. 163, House Bill No. 168 (approved March 30, 1965), reads as follows: '* * * Also, the Clerk of the Court shall deduct for the use of the County twenty percent of any sum or sums collected for and remitted to the State.' Will the above twenty percent be deducted from the Alabama Peace Officer's Annuity and Benefit Fund, which are collected in the Intermediate Court of Cullman County before remitting to the State Treasurer?" Act No. 592, supra, applies to any **sum** remitted to the State of Alabama and as I have stated in Question No. 9 above, the cost assessed under **Act 999, Section 9**, supra is part of the sum remitted to the State. It is my opinion that Act No. 592 would allow the Clerk of the Court to deduct twenty percent of the total sum collected to be remitted to the State, which includes the cost in Act 999, Section 9, supra, for the use of the county.

Very truly yours,

MacDONALD GALLION
Attorney General

October 30, 1969

Honorable Bob A. Davis
Mayor
Town of Fort Deposit
Butler County
Fort Deposit, Alabama 36032

Gasoline and Gasoline Tax — Gasoline Funds — Bonds — Municipalities.

1. A municipality may invest surplus funds derived from its share of the State Highway Gasoline Tax in "Treasury Notes" of the United States.

2. The share of the State Highway Gasoline Tax which is distributed to a municipality may not be commingled with the other municipal funds.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated October 9, 1969, is as follows:

> "Under Act No. 217, 1969 Regular Session of the Alabama Legislature — Gasoline Tax Revenue paid to Municipalities are required to be deposited in special account set up for these funds. In cases where these funds are not used immediately but left to accrue for future projects, is it permissible to invest these funds in Federal Treasury Notes until such time as they are used."

The statute to which your request refers is Act No. 217, Acts of Alabama 1969, approved July 29, 1969. Under the provisions of said statute a portion of the State Highway Gasoline Tax is distributed to each municipality and the use thereof is controlled.

By virtue of Act No. 246, General Acts of Alabama 1943, page 203, any municipal funds not presently needed for other purposes may be invested in any obligation in which sinking funds are authorized to be invested pursuant to Title 37, Section 265, Code of Alabama 1940. Quarterly Report of Attorney General, Volume 87, page 30. Cf. Quarterly Report of Attorney General, Volume 100, page 12.

Section 265, supra, reads, in part, as follows:

> "All sinking funds provided for the retirement of bonds shall be invested in bonds of such subdivision, or in bonds of the United States, or in bonds of the state of Alabama, or in bonds of any county in the state of Alabama, or any municipal corporation of the state of Alabama, or deposited in bank on interest; . . . ."

The Treasury Notes to which your request refers are bonds of the United States of America within the meaning of Section 265, supra. See Quarterly Report of Attorney General, Volume 108, page 10.

Therefore, I am of the opinion that the Town of Fort Deposit may invest any surplus funds not presently needed for the purposes prescribed by Act No. 217, supra, in the Treasury Notes to which you refer.

Since Act No. 217, supra, specifically provides that the monies distributed thereunder to municipalities must be kept in a special fund, it should here be stated that such gasoline tax funds may not be commingled with other municipal funds for the purpose of purchasing the Treasury Notes to which you refer.

Very truly yours,

MacDONALD GALLION
Attorney General

October 30, 1969

Honorable James C. Wood
Assistant County Attorney
Mobile County
P. O. Box 1443
Mobile, Alabama 36601

Attorneys—Counties—Officers and Offices—Sheriffs.

Under the provisions of Act No. 92, Acts of Alabama 1967, Regular Session, Page 422, county governing bodies are authorized, in their discretion, to defray the costs of defending lawsuits brought against county officials when such lawsuits are based upon and grow out of the performance by said officials of any duty in connection with their offices and do not involve a wilful or wanton personal tort or a criminal offense committed by the official.

Opinion by Assistant Attorney General Hall.

Dear Mr. Wood:

Your request for an official opinion bearing date of October 24, 1969, is as follows:

> "The Sheriff of Mobile County has recently been personally sued for damages by a former prisoner. The actions of the Sheriff, acting in his official capacity and through his deputies, form the basis of this suit. Since this problem has arisen several times, involving not only the Sheriff but other elected county officials, I would like your opinion on the following questions:
>
> "1. Can Mobile County legally pay the legal fees incurred by the sheriff in defense of civil suits against him personally?
>
> "2. Can Mobile County legally pay legal fees incurred by elected county officials in defense of civil suits against them personally, said suits arising out of the actions of these officials done in their official capacity?"

Act No. 92, Acts of 1967, Regular Session, Page 422, provides as follows:

> "Section 1. Any law to the contrary notwithstanding, the governing body of any county of the State of Alabama may, in its discretion, defray the costs of defending any lawsuit brought against any county official when such lawsuit is based upon and grows out of the performance by said official of any duty in connection with his office and does not involve a wilful or wanton personal tort or a criminal offense committed by the official. The expenses of defending such litigation may include

witness fees, transportation, toll and ferry expenses of witnesses, attorneys fees, court costs, and any other cost in connection with the defense of said litigation.

"Section 2. If any county has expended money for the purposes set out hereinabove in Section 1 of this act, such expenditure is hereby validated and shall not be charged back to the official making such payment, neither shall the person who receives such payment be liable for any reimbursement of same."

In view of the provisions of this Act, it is my opinion that each of your questions should be answered in the affirmative.

Very truly yours,
MacDONALD GALLION
Attorney General

November 6, 1969

Honorable J. Cecil Gardner
Staff Attorney
Alabama League of Municipalities
Post Office Box 1270
Montgomery, Alabama 36104

Gasoline and Gasoline Tax — Gasoline Fund — Municipalities — Streets.

1. A municipality may expend its share of the State Highway Gasoline Tax only for those purposes enumerated in Act No. 217, Acts of Alabama 1969, approved July 29, 1969.

2. A municipality may pay from such funds the salaries of employees who perform work necessary for such enumerated purposes.

3. Where a municipal employee devotes only a portion of his working time to such purposes, only a proportionate share of his salary may be paid from such funds.

4. The share of the State Highway Gasoline Tax which is distributed to a municipality must be kept and expended from a separate account and not commingled with other municipal funds.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated October 7, 1969, is as follows:

"As you know, the past Regular Session of the Alabama Legislature passed Act 217. This Acts amends Act 224 of the 1967 Regular Session, which provides for the distribution and use of the State Highway Gasoline Tax.

"Section (B) of Act 217, **supra,** amends Section 7 of Act 224, **supra,** and provides in part as follows:

" '(c) Where the use is by a municipality, such use shall be for transportation planning, the construction, reconstruction, maintenance, widening, alteration and improvement of public roads, bridges, streets and other public ways, including payment of the principal of and interest on any securities at any time issued by the municipality pursuant to law for the payment of which any part of the net tax proceeds may be lawfully pledged;

" 'provided, that no part of the net tax proceeds referred to in this section shall be expended contrary to the provisions of the constitution; and provided further that funds distributed to municipalities under the provisions of this Act shall not be commingled with other funds of the municipality and shall be kept and disbursed by such municipality from a special fund only for the purposes hereinabove provided.'

"On behalf of the cities and towns of Alabama I respectfully request your official opinion as to the following questions:

"1. May a municipality pay from its State-shared gasoline tax funds the salaries of employees of the Street Department of the municipality (i) where such employees devote all their working time to the affairs of the Street Department (ii) where such employees devote only a portion of their working time to the affairs of the Street Department and at other times are assigned to various other departments of the municipality?

"2. May a municipality use said gasoline tax funds to pay the salaries of persons employed by the municipal Street Department in a clerical capacity?

"3. Is Act 224 as amended by Act 217, and especially that portion of Act 217 quoted above which requires that funds thereunder be kept and disbursed from a 'special fund,' sufficiently complied with if a municipality utilizes accounting and bookkeeping methods which accurately reflect the amount of State-shared gasoline tax funds on hand and the purposes for which disbursements are made?"

That portion of Act No. 217, Acts of Alabama 1969, approved July 29, 1969, which is material to the questions presented is quoted in your request. As you point out, said statute amends Act No. 224, Acts of Alabama 1967, page 295, which controls the distribution and use of the State Highway Gasoline Tax.

Act No. 217, supra, was enacted to change the method of distributing the funds controlled by Act No. 224, supra, not to change the use of such funds.

In construing Act No. 224, supra, we have held that a municipality may expend its share of the funds, here considered, to purchase and install stop signs, traffic signals and street lights. We have also held that such funds may be used to purchase electricity needed for traffic control. See opinions to Honorable Herman L. Nelson, Director, State Highway Department, dated March 20, 1968, and to Honorable Z. D. McCuen, City Clerk, City of Tarrant, dated May 16, 1968.

In construing constitutional and statutory language similar to the provisions of Act No. 217, supra, we have held that any expense necessary to the construction, maintenance and improvement of public roads by counties may be paid from gasoline tax funds, such as clerical help, the purchase of a gravel pit in order to cut costs of gravel to be used on a public road, and reasonable attorneys' fees in the acquisition of the right-of-way for a public road. See Quarterly Report of Attorney General, Volume 94, page 9, and authorities there cited.

Based upon the above authorities, you are advised that a municipality may use the funds to which your request refers to pay the salaries of employees whose work is necessary to the purposes enumerated in that portion of Act No. 217, Acts of Alabama 1969, approved July 29, 1969, which is quoted in your request. You are further advised that only the proper proportionate share of salaries may be paid from such funds to municipal employees who devote only part time to such purposes. The salaries of persons employed in a clerical capacity who devote their working time to such purposes may be paid from the funds here considered. Of course, the salaries of sanitation workers who are employed by a municipal street department may not be paid from such funds.

You are also advised that due to the specific provision of Act No. 217, supra, prohibiting the gasoline funds from being commingled with other municipal funds, a separate account must be maintained for the purpose of receiving and expending such funds.

Very truly yours,

MacDONALD GALLION
Attorney General

November 13, 1969

Mr. Hilton J. Ishee
Superintendent
Greene County Board of Education
Eutaw, Alabama

County Boards of Education — Schools — Teachers — Jurors and Juries — Salaries.

1. Leaves of absence, with pay, for teachers called for jury service are required to be granted, and the allowance of any such pay shall be at the usual rate of compensation less the fee or compensation received for serving as such jurors as provided by Act No. 619, Regular Session 1969.

Opinion by Assistant Attorney General Hall.

Dear Mr. Ishee:

Your request for an official opinion bearing date of October 30, 1969, is as follows:

> "I have had teachers this year to serve on the jury thereby being absent from school on those days. We have not paid these teachers for these days absent.
>
> "Is it legal to have unavoidable leaves of absence, should the board of education approve and put in the minutes, for teachers and pay these teachers? If so would these teachers be paid full pay or the difference between the teachers pay and jury pay for example? And if this is legal, could the board of education upon documenting this in the minutes, make payments retroactive to teachers that have been absent since September 2, 1969, due to unavoidable circumstances."

Title 52, Section 136, Code of Alabama 1940 (Recompiled 1958), as amended, provides as follows:

> "The county board of education shall have the authority, under such rules and regulations as may be promulgated from time to time by the state board of education to provide for the payment from public funds of teachers or other employees of the county board of education who are employed by the year for not over two weeks which said teacher or employee may be allowed by said board as a vacation, but such vacation must not be allowed during the time the schools are in session; and to provide leaves of absence during the time the schools are not in session for such teachers and employees on part or full pay when such teacher or employee devotes such leave of absence to instructing in or attending schools for teacher training or in such manner as approved by the state board of education as beneficial to the educational work of the county; and to provide for the payment of any teacher, whether employed by the year or not, for absences during the time schools are in session where such absence results from sickness or some other unavoidable cause which prevents such teacher from discharging his duties; provided that pay for such absence caused by sickness shall not

be allowed for a longer time than forty-five days during any one year and pay for such absences resulting from unavoidable causes other than sickness shall not be allowed for a longer time than one week during any one year, and the allowance of any such pay shall at all times be in the discretion of the county board of education."

In my opinion, a teacher called for jury service is absent for an "unavoidable cause which prevents such teacher from discharging his duties." You will note by reading Title 52, Section 136, supra, that allowance of any pay for such an absence is limited to a period for no longer than one week during any one year, and the allowance of any such pay shall at all times be in the discretion of the County Board of Education. However, on August 29, 1969, Act No. 619, Regular Session 1969, was approved by the Governor. Sections 1, 2, and 3 of said Act are as follows:

"Section 1. Upon receiving a summons to report for jury duty, any employee shall on the next day he is engaged in his employment exhibit the summons to his immediate superior and the employee shall thereupon be excused from his employment for the day or days required of him in serving as a juror in any court created by the Constitutions of the United States or the State of Alabama or the laws of the United States or the State of Alabama. Notwithstanding the excused absence as herein provided, any full time employee shall be entitled to his usual compensation received from such employment less the fee or compensation he received for serving as such juror. It shall be the duty of all persons paying jurors their fee or compensation for services to issue to each juror a statement showing the daily fee or compensation and the total fee or compensation received by the juror.

"Section 2. All laws or parts of laws which conflict with this Act are repealed.

"Section 3. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law."

In my opinion, since said Act No. 619 expressly repeals all laws or parts of laws which conflict therewith, the one week limitation is no longer applicable to jury service by teachers, and they must be paid at the usual rate less the fee or compensation received for serving as such jurors, provided they comply with the provisions of said Act.

Very truly yours,

MacDONALD GALLION
Attorney General

November 18, 1969

Honorable Earl T. Rogers
Tax Assessor of Jefferson County
106 Court House
Birmingham, Alabama

Ad Valorem Taxes — Exemptions — Constitutionality.

Constitutionality of Act No. 1137, Regular Session 1969, discussed generally.

A bill for raising revenue must originate in the House of Representatives. Section 70, Constitution of Alabama 1901.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an opinion dated October 16, 1969 is as follows:

"Please give me your opinion on the following question.

"Did Senate Bill No. 522 of the 1969 session of the Legislature legally amend the exemption of manufactured articles as provided in the Code of Alabama, Title 51, Section 2, Sub-section 'M'?

"Prior to the passage of this act, Sub-section 'M' read as follows:

" 'All articles manufactured in Alabama, including pig iron, in the hands of the producer or manufacturer thereof, shall be exempt from taxation for twelve months after its production or manufacture.'

"The wording of this same Sub-section in Senate Bill No. 522 now reads as follows:

" 'All manufactured articles including pig iron, in the hands of the producer or manufacturer thereof, then stored at or near the place of manufacture or within the county where same was manufactured or produced, shall be exempt from taxation for twelve months after its production or manufacture.'

"The Title of Senate Bill No. 522 reads as follows:

" 'To amend Section 2 of Title 51 of the Code of Alabama of 1940, as heretofore amended, so as to exempt from ad valorem taxation all devices, identifiable parts of devices, systems or facilities constructed, used or placed in operation primarily for the protection of the public and the public interest through the control, reduction or elimination of air or water pollution.'

"The question to me seems to be this. Is the change which was made in Sub-section 'M' a valid amendment since the Title of the Bill states that the purpose of the bill is to exempt certain

devices from taxation and makes no reference to amending the existing exemption of manufactured articles. This same question should also be applied to the following quotation from Sub-section 'A' as shown in Senate Bill No. 522 which I quote as follows:

' "All security agreements and security interests under the Uniform Commercial Code, together with the notes, debts, and credits secured thereby;'

"This provision has never appeared in the Code and is not mentioned in the Title of the Act.

"Your assistance in this matter will be greatly appreciated."

As pointed out in your request, the Title to Act No. 1137 states "To amend Section 2 of Title 51 of the Code of Alabama 1940, as heretofore amended, so as to exempt from ad valorem taxation . . . " certain devices used in the control, reduction or elimination of air and water pollution. Yet, the body of the Act contains, in addition to that specified in the Title, a change in Subsection (m) of Section 2 and adds to Subsection (a) the security agreements and security interest under the Uniform Commercial Code. In view of this, a constitutional question might be raised under the provisions of Section 45, Constitution of Alabama 1901.

Section 70, Constitution of Alabama 1901 provides, in part, that "All bills for raising revenue shall originate in the house of representatives . . . ." The Supreme Court of Alabama has held that any bill whose chief purpose is to create revenue, or to increase or decrease revenue as created in another Act is one to raise revenue and must comply with Section 70. See **In re Opinion of the Justices,** 238 Ala. 289, 190 So. 824; **In re Opinion of the Justices,** 249 Ala. 389, 31 So. 2d 558. Act No. 1137 purports to amend Section 2, Title 51, Code of Alabama 1940, which relates to exemptions from ad valorem taxation and Senate Bill 522 is clearly a "bill for raising revenue" within the meaning of Section 70, supra. Therefore, this legislation should have originated in the House of Representatives.

However, our opinions are advisory only and this office has no authority to declare an act of the Legislature unconstitutional. The constitutionality vel non of the legislative enactment is, therefore, for a court of competent jurisdiction to determine. Premises considered, I can only now advise that Act No. 1137 be followed until a court of competent jurisdiction has made its determination.

Very truly yours,

MacDONALD GALLION
Attorney General

November 18, 1969

Honorable John F. Watkins
Executive Director
Alabama League of Municipalities
P. O. Box 1270
Montgomery, Alabama

Costs and Fees — Municipalities — Recorder's Court.

The cost imposed by Section 9 of Act No. 999, Acts of Alabama 1969, approved September 12, 1969, applies to no municipal ordinances except those prescribing moving traffic violations.

Opinion by Assistant Attorney General Morrow.

Dear Sir:

Your request for an opinion of this office bearing date of October 8, 1969 is as follows:

"As you know, the recent Legislature passed H.B. 288 and this bill was signed into law as Act No. 999 by Governor Brewer on September 12. I refer you to Section 9 of said Act, which reads as follows:

" '**Section 9. Additional Court Costs Imposed; Disposition Thereof.** In all criminal and quasi-criminal proceedings for the violation of laws of the State of municipal ordinances, except violations of State conservation laws or regulations, which are tried in any court or tribunal in the State, wherein the defendant is adjudged guilty or pleads guilty or wherein a bond is forfeited and the result of the forfeiture is a final disposition of the case or wherein any penalty is imposed, there is hereby imposed an additional cost of court in the amount of One Dollar ($1.00) for each moving traffic violation, Five Dollars ($5.00) in each such proceeding where the offense constitutes a misdemeanor and Ten Dollars ($10.00) in each such proceedng where the offense constitutes a felony; Provided, however, that there shall be no additional cost imposed for violations relating to parking of vehicles . . . ."

"On behalf of the cities and towns of Alabama, I respectfully request your official opinion as to the following questions:

"1. What constitutes a 'moving traffic violation'?

"2. As it is the rule in Alabama that the violation of a municipal ordinance does not rise to the dignity of a misdemeanor (**State v. Town of Springville,** 220 Ala. 28, 125 So. 387 (1929)), am I correct in assuming that no additional costs are imposed by Act No. 999 in proceedings for violations of municipal ordinances other than proceedings involving 'moving traffic violations'?"

Section 9 of Act 999, Acts of Alabama 1969 reads as follows:

> "Section 9. Additional Court Costs Imposed; Disposition Thereof. In all criminal and **quasi-criminal** proceedings for the violation of laws of the State **or municipal ordinances,** except violations of State conservation laws or regulations, which are tried in any court or tribunal in the State, wherein the defendant is adjudged guilty or pleads guilty or wherein a bond is forfeited and the result of the forfeiture is a final disposition of the case or wherein any penalty is imposed, there is hereby imposed an additional cost of court in the amount of One Dollar ($1.00) for each moving traffic violation, Five Dollars ($5.00) in each such proceeding where the offense constitutes a misdemeanor and Ten Dollars ($10.00) in each such proceeding where the offense constitutes a felony; Provided, however, that there shall be no additional cost imposed for violations relating to parking of vehicles. . . ." (Emphasis added.)

As you can see by the emphasized portions of Section 9, supra, the Legislature definitely intended to include municipal ordinances in the additional court costs to be assessed for various violations. The question which must be answered is whether the violation of a city ordinance constitutes a misdemeanor so as to place it within any category that will cause additional costs to be assessed under Act 999, Section 9, supra. A case which will help us decide what to call a violation of a municipal ordinance is **State v. Town of Springville,** 220 Ala. 286, 125 So. 387, which is summarized as follows:

The State of Alabama passed a statute known as "the Highway Act" cited as Acts of Alabama 1927, page 348, Section 106. Section 106 required that fines and forfeitures, collected by municipal courts for misdemeanors in violation of the Act, shall be paid to the State Highway Department. The town of Springville passed an ordinance that restricted the speed at which a car could be driven within the town and collected fines for the violation of this ordinance. This city ordinance was similar to the restriction on speed created by the State's Highway Act. The State sued the Town of Springville to collect the money the town had received by enforcement of its city ordinance.

The Alabama Supereme Court ruled on the case as follows:

> "It has long been settled apparently in Alabama that a city or town may adopt an ordinance which makes 'municipal offenses of the violation of the misdemeanor statutes of the state.' Casteel v. Decatur, 215 Ala. 4, 109 So. 571; Sloss-Sheffield S. & I. Co. v. Smith, 175 Ala. 260, 57 So. 29, 30; Montgomery v. Davis, 15 Ala. App. 606, 74 So. 730; Fealy v. Birmingham, 15 Ala. App. 367, 73 So 296.
>
> "It is also clear that, when such misdemeanor has not been made a municipal offense, the jurisdiction of the recorder extends

only to its enforcement as a state case. Rosenberg v. Selma, 168 Ala. 195, 52 So. 742. In the early case of Mobile v. Allaire, 14 Ala. 400, this **court expressed the distinction between an ordinance and a criminal statute** in language which was approved in Costello v. Feagin, 162 Ala. 191, 50 So. 134, 135, as follows: 'The object of the power conferred by the charter, and the purpose of the ordinance itself, was not to punish for an offense against the criminal justice of the country, but to provide a mere police regulation for the enforcement of good order and quiet within the limits of the corporation. So far as an offense has been committed against the public peace and morals, the corporate authorities have no power to inflict punishment, and we are not informed that they have attempted to arrogate it. It is altogether immaterial whether the state tribunal has interfered and exercised its powers in bringing the defendant before it to answer for the assault and battery; for whether he has been there punished or acquitted is alike unimportant. **The offenses against the corporation and the state, we have seen, are distinguishable, and wholly disconnected,** and the prosecution at the suit of each proceeds upon a different hypothesis. The one contemplates the observance of the peace and good order of the city. The other has a more enlarged object in view—the maintenance of the peace and dignity of the state.'

"Continuing, this court further stated that 'a city ordinance is not a public law of the state, but a local law of a particular corporation, made for its internal protection and good government. Moreover, if municipal cases before a mayor of a city or town were "criminal prosecutions" in the sense of the Constitution, they would have to be carried on in the name of the state, and conclude "against the peace and dignity of the same." (Language used in Withers Case, supra, pages 261, 262 of 36 Ala.)

"Such proceedings are quasi criminal and upon review by this court are subject to the rules governing civil appeals. Casteel v. Decatur, 215 Ala. 4, 109 So. 571.

"We have referred to section 106 as requiring certain fines to be paid to the state treasurer. Such requirement specifies no court. It only applies to such violations of that article of the act which (by its terms) **constitute a misdemeanor.** [Emphasis theirs.]

"**The violation of a city ordinance is not a crime which could be called a misdemeanor created by the Highway Act . . . .**" [Emphasis added.]

As can be seen from the above case, the Alabama Supreme Court has indicated that a violation of a city ordinance does not rise to the infamy of a misdemeanor. This makes it apparent that although the

Legislature intended to include the violation of city ordinances as offenses to be taxed, they failed to set up a category within the tax schedule which would cover city ordinances other than moving traffic violations. It is my opinion that moving traffic violations that are enforced as city ordinances should be taxed $1.00 as set out in the schedule, but all other violations of city ordinances should not be made subject to the tax.

It should be clearly set out in the complaint whether the offense being tried is being enforced as a city ordinance or violation of a State statute.

Very truly yours,

MacDONALD GALLION
Attorney General

November 19, 1969

Honorable Ray D. Bridges
Sheriff
Mobile County
Mobile, Alabama

Sheriffs — Costs and Fees.

The compensation, fees, allowances and percentages of the several sheriffs of the State of Alabama are governed by the provisions of Act No. 1170 of the 1969 Session of the Legislature of Alabama and all local laws or general laws with local application conflicting are thereby repealed.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of October 6, 1969, is as follows:

> "There is a question that I respectfully ask that you give us an opinion on, set forth in Senate Bill 674 which was passed by the Senate on September 4th and which became law on September 13th, 1969, pertaining to the salary of the various sixty-seven sheriffs throughout the state.
>
> "The bill states that 'such salary shall be in lieu of all fees, compensations, allowances, precentages, charges and costs, except as herein otherwise provided. The Sheriff and his deputies shall, however, be entitled to collect and retain such mileage and expense allowances as may be payable according to law for returning or transferring prisoners and insane persons to or from points outside the County.'

"In the past it has been the policy for us to turn these fees into the County general fund. My question now is if we will be entitled to retain these fees or if they are to continue to go into the County general fund."

In reply to your question, you are advised that under the provisions of Act No. 1170 of the 1969 Session of the Legislature of Alabama, the sheriffs of the several counties are entitled to collect and retain such mileage and expense allowance as may be payable according to law for returning or transferring prisoners and insane persons to or from points outside the county.

I am aware of the fact that several of the counties of the state have by local laws, or general laws of local application, placed the sheriff on a salary basis with the provision that all fees, allowances, percentages, charges, and costs of court shall be collected by the sheriff and remitted to the general fund of the county.

The general rule of statutory construction is that a general law does not repeal a local law or a general law of local application unless there is a specific repeal of such local law by the general law. However, there is a well known exception to this rule, this exception being, if there is a clear general intent of the Legislature to establish a uniform system throughout the state, the presumption is that all local statutes are repealed by the general statutes. **Shepherd v. Clements,** 224 Ala. 1, 141 So. 255.

Act No. 1170, supra, shows a clear general intent of the Legislature of the State of Alabama to establish a uniform system of compensating the several sheriffs of the State of Alabama, placing all of said sheriffs on the same basis.

You are, therefore, advised that any local law of your county or local law of any other county in conflict with Act No. 1170 is repealed thereby, and the several sheriffs of the counties may collect and retain only such fees and allowances as provided in said act.

Yours very truly,

MacDONALD GALLION
Attorney General

November 19, 1969

Honorable Edward B. McDermott
Town Attorney
Town of Satsuma
P. O. Box 278
Satsuma, Alabama 36572

Municipalities — Salaries.

Laws regulating the payment of overtime salary to certain municipal and county employees that limit application to specific counties would apply only to those county employees and municipal corporations expressly defined in the Act, and not to be construed in the broadest sense.

Opinion by Assistant Attorney General Barnes.

Dear Sir:

Your request for an official opinion of this office bearing date of November 3, 1969 is as follows:

> "The Town Council of the Town of Satsuma, Alabama, has instructed me to request from you an official opinion from your office as to whether or not Act No. 856 of the Regular Session of the Alabama Legislature of 1969 applies to the Town of Satsuma.
>
> "Section 2 of said Act reads as follows:
>
> " 'In all Counties coming within the purview of this Act, all policemen employed by any city in the county, and all deputy Sheriffs in such counties shall be entitled to one and one-half times their hourly wage for each hour worked in excess of 40 hours a week in any one week.'
>
> "The Town of Satsuma, Alabama, is located within Mobile County, Alabama, and said county has a population of not less than 300,000 nor more than 500,000 according to the most recent Federal decennial census and thus, said act would apply to Mobile County. The Town of Satsuma has a population of less than 2,000 inhabitants according to the most recent Federal decennial census and is thus a 'Town' as defined by Title 37, Section 5, Code of Alabama 1940 (Recomp. 1958).
>
> "The question is, since the act refers only to policemen employed by any **City** and does not mention 'town' or 'municipal corporation,' is the Town of Satsuma required to pay its policemen overtime pay in accordance with the provisions of this Act?

The answer to your question is in the negative.

Act No. 856 of the Regular Session of the Alabama Legislature of 1969 reads in part as follows:

> "Section 1. This Act shall apply in and only in counties having populations of not less than 300,000 nor more than 500,000, according to the most recent federal decennial census.

> "Section 2. In all counties coming within the purview of this Act, all policemen employed by any city in the county and all deputy sheriffs in such counties shall be entitled to one and one-half (1 ½) times their hourly wage for each hour worked in excess of forty (40) hours a week in any one week."

The Legislature in enacting this law apparently desired its application only in Mobile County. This intent was accomplished in Section 1 by expressly limiting the application of the Act to those counties having a population of not less than 300,000 nor more than 500,000. A search of the population tables found in the Code of Alabama 1940 (Recompiled 1958) shows that Mobile County is the only county within these limits and the only one apparently to be affected by this law in the reasonable future.

Section 2 of Act No. 856, supra, states in substance that all policemen employed by any city, and all deputy sheriffs, in the affected county will be entitled to overtime pay.

Title 37, Section 5, Code of Alabama 1940 (Recompiled 1958), defines cities and towns, and states in part as follows:

> "Municipal corporations now existing, or hereafter organized under this title, containing two thousand or more inhabitants, shall be called cities. All incorporated municipalities containing less than two thousand inhabitants shall be called towns. The last census, whether federal or taken as herein authorized, shall be taken in determining the population of a city or town. * * * "

The Town of Satsuma was reported in the 1960 Federal decennial census as having a population of 1,491. Under the statute mentioned above, Satsuma is called a town.

The Alabama Code generally uses both of the words "Town" and "City," in many of the sections regulating municipal corporations. The following sections found in Title 37 of the Code are some illustrations of this point: Section 9 on police jurisdiction; Section 34(1-3) on election laws; Section 89 on application of commission government; Section 134 on boundaries.

Because of this usage it is not felt that the Legislature would have used anything but "City" in Act No. 856, supra, and meant anything but "City," as defined in the Code. This point is reinforced by the apparent intent of the Legislature to limit the Act to just certain cities in only one county of the State.

This stand is taken notwithstanding the Attorney General's Opinion on page 719, Biennial Reports of the Attorney General, 1936-38. This opinion was concerned with the interpretation of the word "City" in a general tax Act. The opinion rightfully held that the word "City" would be construed in its broadest sense when used in a law of general nature concerning the collection of taxes on motor vehicles.

Act No. 856, supra, should be considered legislation of a local nature and construed in its narrowest sense.

Under the reasons expressed supra, Act No. 856 should be construed as only applying to cities, as defined in Title 37, Section 5, Code of Alabama 1940 (Recompiled 1958) in Mobile County.

Very truly yours,

MacDONALD GALLION
Attorney General

November 19, 1969

Honorable Edgar P. Russell, Jr.
Associate Judge
Fourth Judicial Circuit
Selma, Alabama

Compensation—Fees—Court Reporters.

There is no statutory authority for payment of additional compensation to court reporter for transcribing testimony wherein a defendant is advised of his constitutional rights prior to the acceptance of his guilty plea by the trial judge.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion, bearing date of October 28, 1969, is as follows:

> "In compliance with your letter of August 7, 1969, regarding advising defendants who plead guilty as to their individual constitutional rights, the undersigned consulted with the District Attorney of this Circuit. As the result of such consultation it was decided that the court reporter would transcribe the entire procedure wherein the defendant was advised of his individual constitutional rights enumerated in your letter; he was asked if he understood each of them and that he was voluntarily waiving the same. Naturally the transcription of this procedure places an additional burden on the court reporter.
>
> "We hereby request your opinion as to whether or not the court reporter is entitled to additional compensation in this regard, and if so how and by whom it is paid."

The compensation of court reporters is set out in Act No. 518, General and Local Acts 1963, page 1106 (Title 13, Section 267 (1), 1967 Cumulative Pocket Part, Code of Alabama 1940, Recompiled 1958).

Should an appeal be taken to an appellate court, fees of the court reporter are set out in Title 7, Section 827 (2), and in Title 15, Section 380 (20), Code of Alabama 1940, Recompiled 1958, as amended.

I find no statutory authority for the payment of additional compensation for the above-named services of the court reporter. In my opinion, this duty is one included under Title 13, Section 262, Code of Alabama 1940, Recompiled 1958, as a required duty of the court reporter.

Yours very truly,

MacDONALD GALLION
Attorney General

December 4, 1969

Lt. B. G. Bryant
Chairman
Board of Directors
Alabama Peace Officers Annuity and Benefit Fund
304 Dexter Avenue
Montgomery, Alabama

Board of Commissioners of the Alabama Peace Officers' Annuity and Benefit Fund — Statutes — Appropriations.

1. The Board of Directors of the Alabama Peace Officers' Annuity and Benefit Fund may expend moneys from the Fund in order to pay salaries, rent office space, buy equipment, and for other administrative-expenses.

2. The Board of Directors of the Alabama Peace Officers' Annuity and Benefit Fund may hire an Executive Director, specialized personnel, and office personnel. These persons may work in the office or the field.

3. The members of the Board of Directors of the Alabama Peace Officers' Annuity and Benefit Fund may be compensated for meetings they have already attended.

Opinion by Assistant Attorney General Morrow.

Dear Sir:

Your request for an opinion of this office bearing date of October 21, 1969 is as follows:

"There is a number of questions we need cleared up before we can administer any part of the Peace Officers Annuity and

Benefit Fund (HB 288, 1969 Legislature). We would appreciate it if you could give us an opinion in the following matters. The retirement board would appreciate this opinion at your earliest convenience.

"#1, We need to hire an Executive Director to administer this fund. Can we (the board) appoint this person at this time? What would this person's salary be?

"#2, Can we also draw moneys from this fund to buy office equipment, to rent office space and spend on other administrative matters?

"#3, Can we also hire additional office and field employees?

"#4, In section six of this act it is set out where the board may hire specialized personnel, may we hire specialized personnel to work in the field?

"#5, According to section three the board members may be compensated for board meetings, since one of the board members lives out of Montgomery may we now pay him for attending these meetings?

Before any other questions in your letter of October 21, 1969 can be answered, we must decide if the Board, created under Act 999 of the Acts of Alabama 1969, has the power to pay any money out of the Peace Officers' Annuity and Benefit Fund for any reason. Before any money may be used by the Board, there must be an appropriation by the Legislature. On a casual reading of the Act, it appears that the Legislature in Section 22 only appropriated $1,000 to the Board and it was to be encumbered by September 30, 1969.

"Section 22. Appropriation. There is hereby appropriated from the Fund the sum of $1,000 for payment of the expenses of the Board until September 30, 1969."

This appropriation obviously was only to get the Board "off the ground," but was never used because no Board members were appointed until after September 30, 1969. After a more careful reading of the Act, it is apparent that the Legislature did not intend this $1,000 appropriation to be the only funds available to the Board. In Section 4 of the Act the Board is given power to select an Executive Director and the Director's salary is set at $7,500 annually.

" . . . The Executive Director shall be compensated for his services as such in an amount to be fixed by the Board but not to exceed $7,500 annually." Act 999, Section 4, Acts of Alabama 1969.

It is clear that the Legislature surely made some other appropriation within the Act to make funds available to pay this salary and other expenses. In Section 5 of the Act we find a special fund created by the

Legislature and placed under the management of the Board. Also within Section 5 the Board is given authority to " . . . expend moneys in the Fund in accordance with the provisions of this Act and to invest . . . ."

> "Section 5. Creation of the Fund. A special fund is hereby established and placed under the management of the Board for the purpose of providing retirement allowances and other benefits under the provisions of this Act for Members of the Fund. The Fund shall be known as the Alabama Peace Officers' Annuity and Benefit Fund, by and in which name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held in trust for the purposes for which received. All amounts received by the Board pursuant to the provisions hereof shall be paid into the Fund. The Board shall have such control of the Fund as shall not be inconsistent with the provisions of this Act and with the laws of the State. All moneys of the Board shall either be (a) covered into the State Treasury or (b) deposited in a special trust account or accounts in any bank or banks in the State, each of which shall have a combined capital and surplus of not less than $2,000,000, and may be withdrawn therefrom by vouchers or checks signed by the Executive Director pursuant to authorization given by the Board. All investments of moneys in the Fund shall be either (1) deposited with the State Treasurer for safekeeping upon receipt of the State Treasurer therefor, or (2) deposited with any such bank in a custodial account. The Board shall have authority to expend moneys in the Fund in accordance with the provisions of this Act and to invest any moneys so received pending other need therefore [therefor] in any investments which are legal investments for insurance companies under the laws of the State. No member of the Board shall have any interest in any such investment or receive any commission with respect thereto."

It is our opinion that this created a special fund by the Legislature under the management of the Board, and giving the Board authority to expend the moneys in the Fund amounts to an appropriation to the Board out of which the Board may pay the necessary and actual expenses connected with the management of the Fund.

To construe the Act in any other way would cause this legislation to become inoperative and completely defeat the intention of the Legislature to create a working fund administered by the Board.

> "The cardinal rule in interpreting constitutional and legislative provisions, to which all other rules are subordinate, is that the Court must ascertain and give effect to the true legislative intent." **Edmondson v. State,** 282 Ala. 336, 211 So. 2d 469 (1968). "A statute should be construed in accordance with its real

> intent and meaning, and so as not to defeat the legislative purpose." **Starlite Lanes, Inc. v. State,** 283 Ala. 48, 214 So. 2d 324 (1968).
>
> "The Court in interpreting a statute must presume that the Legislature did not do a vain and useless thing." **Ott v. Moody,** 283 Ala. 288, 216 So. 2d 177.

Since our opinion is that the Board may use moneys out of the fund for its operation, we will now answer the questions asked by the Board in its letter of October 21, 1969.

Our answer to your question number 1 is affirmative. You may hire an Executive Director to administer the Fund. The Board's authority for this is found in Section 4 of Act 999, supra.

> " . . . The members of the Board shall elect a chairman of the Board and select an Executive Director, who shall be the chief executive officer of the Board. The Chairman of the Board shall be a member of the Board but the Executive Director need not be such a member. The Executive Director shall serve as such at the pleasure of the Board . . . ."

The maximum salary to be paid to the Executive Director is also set out in Section 4, supra, as being $7,500 per year.

> " . . . The Executive Director shall be compensated for his services as such in an amount to be fixed by the Board, but not to exceed $7,500 annually. . . . "

Your question number 2 is answered in the affirmative. Section 5 of the Act states:

> " . . . The Board shall have authority to expend moneys in the Fund in accordance with provisions of this act. . . . "

Section 6 of the Act states:

> "The Board shall have the following powers in carrying out its responsibilities under this Act: . . . to pay all of its Administrative expenses, within the limitations herein contained; . . . and all other powers necessary for the proper administration of the provisions of this Act."

Because of the authority granted to the Board by Sections 5 and 6, supra, it is our opinion that you may draw money from the fund to buy office equipment, rent office space, and spend on other administrative matters.

Question three is answered in the affirmative. Section 4 of the Act states:

> " . . . The Executive Director shall serve as such at the pleasure of the Board, which may employ such other agents and employees as the Board may deem necessary. Any such employees shall be subject to the Alabama Merit System Act."

Section 6 of the Act dealing with powers of the Board elaborates on Section 4. Section 6 states in part:

> "The Board shall have the following powers in carrying out its responsibilities under this Act: . . . to employ such agents, attorneys, actuaries, and other specialized personnel as shall be necessary or desirable to enable the Board to carry on its functions in a proper and actuarily sound manner; . . ."

Because of the powers granted to the Board in Sections 4 and 6 of the Act, it is our opinion that the Board may hire all additional office and field personnel necessary to carry out its function.

Question four concerning specialized personnel to work in the field is clearly allowable by the powers granted to the Board by Sections 4 and 6, and quoted above in the answer to question three.

Question five is also answered in the affirmative.

> "Compensation of Board Members. Each member of the Board shall be paid at the rate of $10 per day for each day's attendance at meetings of the Board, not to exceed 12 such meetings in any single calendar year, and each shall be paid for his reasonable out of pocket expenses and disbursements in attending such meetings, but in no event shall said amount exceed $30 per day." Act 999, Section 3, Acts of Alabama 1969.

Section 3, supra, places no restriction on when payment is to be made. It is our opinion that Board members may receive payment for all meetings attended and for the necessary and actual expenses incurred in attending such meetings.

This office feels that it is necessary to make one final comment concerning Act 999, Acts of Alabama 1969. We feel that there are many ambiguities which exist due to the way the Act is drafted. In order to clarify the Act and prevent damaging litigation, we suggest that the Act be redrawn at the earliest convenience of the Legislature. This office has found several portions of the Act which are obviously contrary to the intent of the Legislature. If this office may be of service in redrafting this legislation, please do not hesitate to call on us.

Very truly yours,

MacDONALD GALLION
Attorney General

December 5, 1969

Honorable Perry O. Hooper
Judge of Probate
Montgomery County Courthouse
Montgomery, Alabama 36101

Licenses — Judges of Probate — Commissioners of Licenses.

Payment for business or occupational licenses mailed to Commissioners of Licenses and/or Judges of Probate prior to November 1st, but not received by Commissioners or Judges of Probate until November 1st, are "delinquent" within statute imposing penalty for delinquent payment of license tax.

Opinion by Assistant Attorney General Hart.

Dear Judge Hooper:

Your request for an opinion, dated November 17, 1969, states as follows:

"For the past five years the Probate Office of Montgomery County has mailed out notices of business licenses due.

"We have made every effort to simplify the payment of license fees. There are a number of people that mail theirs in at the end of the month within the time limit provided by law October 31, but their check does not arrive in our office until after October 31. The ones I refer to came in envelopes clearly postmarked prior to the delinquent date.

"It seems to me that payment should be the date of the postmark. Most all taxes are handled this way. Contracts deposited in the mail and later delivered are considered to have been delivered on date of deposit. **Hatchett v. Malton,** 76 Ala. 410.

"A particular case in my office at this time. Mr. Paul Cook mailed his check for his licenses in Autauga County and Montgomery County on October 31. Autauga County received his check on time but the mail came to our office after October 31. We always check our post office box at the close of business at 5 o'clock. His check had not come in on time.

"There are others that mailed their checks for the license with earlier postmarks. Because of the heavy increase in mail each day, it seems only fair to the purchaser of a license to consider the postmark date at the date of receipt in the Probate Office. Question: Is one delinquent when he pays for his license on time by mail with the postmark being clearly shown, but the mail arrives in my office on or after November 1?"

Title 51, Section 835(c), Code of Alabama 1940, Recompiled 1958, states, as pertinent here, the following:

> "All licenses levied by this title except as otherwise provided shall be due and payable as of October first of each year and shall be delinquent November first thereafter . . . ."

The Supreme Court of Alabama in the case of **McDowell v. Henry,** 238 Ala. 663, 193 So. 108, states as follows:

> "We are not unmindful of the rule that tax statutes, especially involving a penalty, should be strictly construed in favor of the tax payer, but here the statute is plain and unambiguous. The tax payers became delinquent October the 1st and were given until October the 31st to remove the delinquency and avoid the penalty and the delay seems to be due to their procrastination and not to the fact that the office was closed at 4:30 on the afternoon of October the 31st."

Considering Title 51, Section 835(c), and the opinion of the Supreme Court of Alabama in **McDowell v. Henry,** supra, it is my conclusion that the controlling time for payment of a business license is not the date such payment is postmarked, if paid by mail, but is rather the time when such payment is received in the office of the issuing officer.

Very truly yours,

MacDONALD GALLION
Attorney General

December 8, 1969

Honorable James Healey, Director
Department of Revenue
Jefferson County
A-100 Court House
Birmingham, Alabama 35203

National Guard — Motor Vehicles — Servicemen — License Tags — Distinctive Tags — Exemptions.

1. Where a National Guardsman in this State elects to have the distinctive National Guard tag under Title 36, Section 75(12) - 75(16), inclusive, Code of Alabama 1940, Recompiled 1958, issued to him as his one free tag under the exemption given in Title 35, Section 101, as amended by Act 739 of the 1969 Regular Session of the Alabama Legislature, Code of Alabama 1940, Recompiled 1958, in lieu of the regular or standard tag, which is customarily issued where said exemption is

given under Section 101, as amended, supra, and he sells or disposes of the passenger vehicle, then he can have such license tag transferred from the first vehicle to his newly acquired vehicle without paying the license tax of $13.00, and by paying only the transfer fee.

2. Under the circumstances as are enumerated in the above headnote, the free license tag (standard tag) issued under the exemption given in Title 35, Section 101, as amended by Act No. 739 in 1969, supra, to National Guardsmen and the other servicemen who are named and designated therein, is personal and peculiar to the particular National Guardsman, reservist or serviceman to whom the free tag is issued, and such tag is not transferable to another person, and cannot remain on the vehicle where the vehicle is sold or transferred to another person. However, it may be transferred to another passenger vehicle, acquired and owned by the National Guardsman or serviceman, at the time that he sold or transferred the passenger vehicle for which the free tag was originally issued, which transfer can be made without the guardsman or serviceman involved paying the license tax, and by his paying only the transfer fee.

3. A private individual, to whom the passenger vehicle is conveyed during the license year by the guardsman or serviceman described under the above headnotes, must purchase a new license tag for the vehicle involved by paying the license tax and an issuance fee. However, the tag can be purchased by him on the so-called "quarterly declining basis," provided in Act No. 311 of the 1967 Regular Session (Acts 1967, Vol. II, page 860), depending on the quarter of the license year in which he purchased or acquired the vehicle from the National Guardsman or serviceman to whom the exemption under Section 101, as amended, supra, had been given.

4. Title 36, Section 75(12) - 75(16), inclusive, supra, providing for the distinctive National Guard tag, and Title 35, Section 101, as amended by Act No. 739 of the 1969 Regular Session, supra, providing for one free tag for a passenger car owned and operated by a National Guardsman or one of the other servicemen designated therein are generally discussed in relationship to certain other laws pertaining to motor vehicle licenses and license tags.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion from this office dated November 7, 1969 is as follows:

> "I would like a formal opinion on questions pertaining to the issuance and transfer of Alabama Distinctive National Guard license plates, as well as on the free standard license plates for passenger automobiles provided for in Act No. 739 (Regular Session, 1969) under the following circumstances:
>
> "A. In October, 1969, a member of the Alabama National Guard, with an exemption certificate properly executed, applies for a Distinctive National Guard Tag to be used on his 1962 model car. He accordingly is issued a Distinctive National Guard tag upon payment of the ad valorem tax due plus the issuance fee; being exempt from the license tax of $13.00 as provided for in the above Act.
>
> "In November, 1969, he disposes of this 1962 model car and acquires a 1963 model vehicle which has not been licensed for the current year. He wishes to transfer his Distinctive National Guard tag to this newly acquired 1963 model vehicle.
>
> "My questions here are as follows:
>
> "1. Can we transfer this Distinctive National Guard tag to this 1963 model vehicle upon his paying any ad valorem tax due, plus the license tax of $13.00, and plus the transfer fee?
>
> "2. If this is not permissible, then what should the charges be on the 1963 vehicle?
>
> "B. The 1962 model vehicle, for which the Distinctive National Guard Tag was originally purchased is also sold in November, 1969, to a private individual.
>
> "3. Would not the second owner of this 1962 model vehicle be required to pay the license tax of $13.00? or,
>
> "4. Could he obtain a replacement license tag for this 1962 model vehicle upon payment of the required fee?
>
> "C. Again assuming the same circumstances as above regarding sale and acquisition of the same vehicles, except that the individual originally purchasing the tag for the 1962 model vehicle is an Active Member of the United States Armed Forces Reserve, or a fully qualified member of the Armed Forces of the United States; and further that a standard license tag is purchased for the 1962 model vehicle originally with an exemption certificate properly executed giving him the $13.00 exemption as provided for in Act No. 739 (Regular Session, 1969):

"5. Can this standard license tag be transferred from the 1962 model vehicle to the newly acquired 1963 model and if so, what should the charges be?

"6. If your answer to question 5 is in the affirmative, then what charges should be made to the individual who acquires the 1962 model vehicle, so he can operate it for the balance of the license year?

"7. If your answer to question 5 is in the negative, then would the new owner of the 1962 vehicle be allowed to operate that vehicle on the standard license tag purchased for it by payment of the fee transferring it into his name?

"This Department has had many such questions raised already and I will, therefore, appreciate your guidance so that we can handle such applications in a uniform manner."

Before answering your questions, it is necessary to mention and describe the different statutes involved and in a general way discuss their implications and application. Before doing this, however, it might also be well to briefly describe the nature of the license tax levied on passenger and private motor vehicles.

The license tax levied on the privilege of the owners of such motor vehicles operating them on the highways of this State is primarily a tax and a means of raising revenue, and the tag or license plate is, in effect, a receipt evidencing that such tax has been paid for the particular license tax year. It is true that the tag serves other purposes, such as a means of identifying the vehicle involved and the owner of the vehicle, but its principal function is that of a receipt showing the license tax for the year involved to have been paid. The license tax itself is a means of raising revenue for the maintenance and upkeep of the State highways. See Title 51, Article 6, Code of Alabama 1940, Recompiled 1958 (Pocket Part), and, particularly, Section 693, as amended in 1967 (Pocket Part), supra.

Title 36, Section 75(12)-75(16), inclusive, Code of Alabama 1940, Recompiled 1958, provides for the issuance of distinctive license plates for the "National Guard," **upon the payment of the regular license tax.** Such distinctive National Guard license plates **can be used only** on personally-owned, private passenger vehicles (including station wagons and pick-up trucks) registered in the name of the member of the National Guard and Air National Guard making application therefor, and are to be used on the vehicle for which issued in lieu of the regular license plates or tags normally issued for passenger motor vehicles.

Subsection (14) of Section 75 of Title 51, supra, and the distinctive National Guard tag law, expressly prohibits the distinctive license plates from being transferred "between owners." However, it authorizes the transfer of the distinctive tags to another passenger vehicle

acquired by the guardsman, where he sells or otherwise disposes of the passenger vehicle for which the tags were originally issued.

Section 75(14), supra, provides in the above respect, as follows:

> **"The distinctive license plates issued hereunder shall not be transferable as between motor vehicle owners** and in the event the owner of a vehicle bearing such distinctive plates shall sell, trade, exchange or otherwise dispose of same such plates shall be retained by the owner to whom issued and by him returned to the judge of probate or license commissioner of the county who shall receive and account for same in the manner stated below. **In the event such owner shall acquire by purchase, trade, exchange or otherwise a vehicle for which no standard plates have been issued during the current license year the judge of probate or license commissioner of the county shall, upon being furnished by the owner thereof proper certification of the acquisition of such vehicle and the payment of the motor vehicle license tax due upon such vehicle, authorize the transfer to said vehicle of the distinctive license plates previously purchased by such owner, which plates shall authorize the operation of said vehicle for the remainder of the then current license year.** In the further event the owner of such distinctive plates shall acquire by purchase, trade, exchange or otherwise a vehicle for which standard plates have been issued during the current license year the judge of probate or license commissioner shall, upon proper certification of such owner and upon delivery to such official of the standard plates previously issued for such vehicle, authorize the owner of such newly-acquired vehicle to place the distinctive plates previously purchased by him upon such vehicle and use same thereon for the remainder of the then current license year. Such notice of transfer of ownership shall be made of record by the judge of probate or the license commissioner. (Emphasis supplied.)
>
> "Provided further, that any person acquiring by purchase, trade, exchange or otherwise any vehicle formerly bearing such distinctive plates shall be authorized, upon certification of such fact to the judge of probate or license commissioner of the county and the payment of the fee now required by law, to purchase standard replacement plates for such vehicle which shall authorize the operation of such vehicle by the new owner for the remainder of the license year."

The distinctive tags which are provided for under Title 36, Section 75(12)-75(16), inclusive, supra, then are to be issued only to "members of the National Guard and Air National Guard" of this State, and are to be used and are to be transferred only under the conditions as are prescribed therein, and never "between owners."

Act No. 739 of the 1969 Regular Session of the Alabama Legislature which expressly amends Section 101 of Title 35, Code of Alabama 1940, provides an exemption from the license tax on passenger vehicles owned and operated in this State by the Federal Government, and by active members, whether regulars or reserves, of the armed forces, including members of the National Guard and Air National Guard, whether they be commissioned officers, non-commissioned officers, or enlisted men, as follows:

> "There shall be exempt from the operation of the privilege or license tax and registration fee now or hereafter to be levied on automobiles and motor vehicles by the State of Alabama, passenger vehicles owned and operated by the Federal Government, or any passenger vehicle owned and operated by officers and enlisted men actually serving in the United States Army who are assigned by the Department of Defense as instructors or sergeant-instructors with the National Guard of Alabama or by all officers, warrant officers, and enlisted men who are serving on active duty in the armed forces of the United States who are residents of Alabama at the time the exemption is claimed and who entered active service **or by all commissioned officers, noncommissioned officers, and enlisted men of the active National Guard of Alabama and active members of the United States Armed Forces Reserve Organizations.** Provided that each individual who is entitled to the exemption from the operation of the motor vehicle or license tax and registration fee levied on automobiles and motor vehicles by the State of Alabama **shall be entitled to such exemption for only one passenger vehicle; it being the intention of this legislature to limit such exemption to one per individual serviceman.** Such vehicles shall be properly identified with tags or plates issued by the proper department of the federal government or by the commanding officers of the army or national guard having jurisdiction in the premises; and upon presentation of such proper identification to the county officials of the county in which said vehicle is ordinarily kept or stored said official of the state of Alabama **shall issue a license tag to be attached to said vehicle, without, however, charging the usual fees for registration or licensing of said vehicles."** (Emphasis supplied.)

Title 35, Section 101, and said statutes as amended by Act No. 739 in 1969, does not purport to repeal Title 36, Section 75(12)-75(16), inclusive, supra. However, it has the effect of modifying Subsection (13) of Section 75 of Title 36, which requires the license tax to be paid when the distinctive tag is issued, to the extent of authorizing one free tag to each National Guardsman. Therefore, but for the above exception, Title 36, Section 75(12)-75(16), inclusive, supra, relating to the distinctive tag for National Guardsmen, and Title 35, Section 101, as amended by Act No. 739, supra, providing for one free tag for active

reservist, servicemen and National Guardsmen, are separate and independent laws, which have their distinctive fields of operation.

It should also be pointed out here that the $1.00 additional charge made in connection with the issuance of the distinctive National Guard tag was eliminated by amendment made to Title 36, Section 75(13), supra, in 1959.

In an official opinion rendered by this office to Honorable J. P. King, Judge of Probate, Blount County, Alabama, dated September 30, 1969 (M.S.), the following very pertinent ruling was made:

> "The issuance of distinctive tags to members of the National Guard is not mandatory. An active member of the National Guard (Army or Air) may apply for a distinctive license plate in lieu of the standard license tag normally issued. The one free tag issued pursuant to Act No. 739, supra, may be a standard tag or a distinctive tag at the request of the guardsman. In addition to one free tag, each active member of the Alabama National Guard is entitled to a distinctive license plate for each personally owned, private passenger vehicle registered in his name, upon payment of the regular license tax prescribed by law. Act No. 308, Acts of Alabama 1955, as amended by Act No. 253, Acts of Alabama 1959. Also, see Quarterly Report of the Attorney General, Volume 113, page 75."

In the same opinion this office ruled that an issuance fee of fifty cents may be charged under the circumstances, as an "issuance fee" or fee for issuing the license is not a "registration or licensing fee."

It is also well to note that the exemption under Act No. 739, supra, relates only to motor vehicle license taxes on passenger cars and registration fees. It does not exempt such servicemen and National Guardsmen from ad valorem taxes on motor vehicles. Therefore, under Title 51, Section 704, as amended, Code of Alabama 1940, Recompiled 1958, all ad valorem taxes which might be due on such vehicles must be paid, and a receipt from the Tax Assessor of the county evidencing the payment of such taxes must be presented to the Probate Judge or Commissioner of Licenses, as the case might be, before the distinctive license plates under Section 75 of Title 36, supra, or the free tag under Section 101 of Title 35, as amended in 1969 by Act No. 739 of the Regular Session, supra, can in any case be lawfully issued.

With the foregoing as a background, your questions are answered in the order presented by you, as follows:

1. Your first question is answered to the effect that the distinctive National Guard tag which was issued in October, 1969, for the 1962 model passenger car, under the facts as related by you, can lawfully be transferred to the 1963 model passenger car, which was acquired by the National Guardsman involved.

You state that the National Guardsman sold the 1962 model car for which the license tag was issued in October, 1969, in November, 1969, and at practically the same time that he acquired the 1963 model car. Moreover, the tag issued for the 1962 model car was a distinctive National Guard tag issued under Title 36, Section 75(12)-75(16), inclusive, supra, and it was also issued free under the exemption given to National Guardsmen and other designated servicemen under Title 35, Section 101, as amended by Act No. 739, supra. This statute exempts one passenger vehicle in each such case from the payment of the license tax and the registration fee, upon proper application being made by the National Guardman or serviceman for the exemption.

Normally it is customary for the license tag issued under Section 693, supra, to remain on the vehicle for which it has been issued for the entire license year, and Section 706 of Title 51, prohibits its removal from the vehicle where the vehicle is sold or otherwise disposed of by the owner during such year. But, Section 706 makes it unlawful to transfer the tag to another vehicle during the same year only when "proper motor vehicle licenses have been **bought** for the current tax year" for the original motor vehicle. However, in the case of the distinctive National Guard tag, Sub-section (14) of Section 75, Title 36, supra, expressly prohibits the transfer of such tags "between motor vehicle owners." It also authorizes the transfer of the distinctive tag to another vehicle owned by the guardsman where he sells or otherwise disposes of the passenger vehicle for which the license tag was originally issued. Therefore, as Section 75(14) of Title 36, supra, is a special statute relating specifically to the distinctive National Guard tag, it would in this respect supercede the provisions of Title 51, Section 706, supra, which is a statute of general application. **Herring v. Griffin,** 211 Ala. 225, 100 So. 202, **Downing v. City of Russellville,** 241 Ala. 494, 3 So.(2d) 310, among others.

The license tag customarily issued under Title 51, Section 101, as amended in 1969 by Act No. 739, supra, is the regular tag or license plate issued for private passenger vehicles under Title 51, Section 693, as amended, supra. However, as pointed out in the opinion of this office rendered to the Honorable J. P. King, Judge of Probate, Blount County, Alabama, on September 30, 1969 (M.S.), the issuance of the distinctive tag under Section 75(12)-75(14), supra, is not mandatory. Thus, an active member of the National Guard may apply in the case of the one free tag for a distinctive license tag or plate in lieu of the standard tag normally issued under Section 101 of Title 35, and said section as amended by Act No. 739, supra, or he may choose the standard tag, as he has an election in this regard. In the case described by you, it is obvious that the guardsman under Section 101, as amended by Act 739, supra, has elected to take as his one free tag a distinctive tag under Section 75(12)-75(16), supra, instead of the regular tag. Under the circumstances then the provisions of both of these separate laws would be applicable.

Had the guardsman under such circumstances chosen to proceed only under Section 101, as amended by Act No. 739, supra, and had been issued under Section 693, supra, the regular or standard license plate for the 1962 model vehicle, instead of the distinctive plate, then he could have still transferred the regular license plate to the 1963 model later acquired by him. This is true because such tag was issued to him under Act 739 as his one free tag for the tax year 1970, and as evidence of the fact that the exemption had been granted especially to him. Therefore, the tag issued to said guardsman was peculiar to the exemption given him, and was not transferable when the vehicle was sold or transferred to another owner. It was, in effect, only evidence that the exemption had been granted under Section 101, as amended by Act No. 739, supra, to said National Guardsman, as no license tax on the vehicle had been paid. The tag, being peculiar to such exemption and the particular guardman to whom the exemption was granted, then could not be transferred with the vehicle when the vehicle was sold or transferred to the new owner, and could not lawfully remain on the vehicle when it was transferred or sold. It being the guardsman's one free tag under the exemption, it could be during the same year transferred to a newly acquired vehicle owned by him.

The transfer provisions under Title 51, Section 706, supra, apply only when the regular license tags "shall have been **bought,**" and where the license tax has been paid. They would not apply in the case where a specific exemption is given, as it is under Section 101, as amended by Act No. 739, supra, to a particular person, and as it has been given to the National Guardsman involved, and where no license tax is required or has been paid.

2. Your second question has already been, in effect, answered by me in answering your first question.

3. The answer to your third question is in the affirmative. Under the facts as are related by you, and as the 1962 model passenger vehicle formerly owned by the National Guardsman was acquired by a private individual, such individual would have to procure a new license tag in his name for the vehicle and he would owe the full license tax of $13.00 for the license year beginning October 1, 1969, and ending September 30, 1970. Such owner and transferee, however, where the circumstances would permit, would be entitled to pay the license tax under Act 311 of the 1967 Regular Session of the Alabama Legislature (Act 1967, Vol. II, page 860) on the so-called "quarterly declining basis," on the assumption that the vehicle was not subject to license tax during the tax year involved (because of the exemption to the guardsman) until the vehicle was purchased or "acquired" by said private individual, and first used by him on the highways of this State at the time he acquired it, as is contemplated by Act No. 311 of the 1967 Regular Session (Acts 1967, Vol. II, page 860). However, as the 1962 model car was acquired by said transferee in November,

1969, he would have to pay the license tax for four full quarters or the entire 1970 license tax year. He would also be required to pay an issuance fee of 75 cents, which is the usual fee for issuing tags for private passenger vehicles.

4. Your fourth question has been answered, in effect, by my answer to your third question. Therefore, it is in the negative. The replacement tag referred to in the proviso contained in Subsection (14) of Section 75 of Title 36, supra, is applicable **only where the license tax has been paid,** and where it is required to be paid, as is provided under Subsection (13) of Section 75, supra, where the distinctive National Guard tag only is involved.

5. The answer to your fifth question is in the affirmative. Active members of the United States Armed Forces Reserve and other active members of the armed forces located in Alabama, and who are named in Section 101, as amended by Act No. 739, supra, are under that statute entitled to the same exemption which is given to active members of the National Guard in this state. Therefore, I give as the reasons for my answer in this respect the same ones as were given by me in answering practically the same inquiry under your question numbered "one," where a National Guardsman elects to have the regular or standard license tag or plate issued to him as his one free tag under the exemption given under Section 101, as amended by Act No. 739, supra. Under the facts as are related by you, the license tag can be transferred under said statute by an active reservist or serviceman from his 1962 model passenger vehicle to his newly acquired 1963 model passenger vehicle without the payment of the license tax and registration fee, the same as in the case of the National Guardsman. Of course, Title 36, Section 75(12)-75(16), inclusive, supra, which provides only for the distinctive National Guard tag, is applicable only to National Guardsmen, and does not include within its purview reservists or servicemen who are not also National Guardsmen.

6. Your sixth question is answered to the effect that the private individual and transferee referred to by you would be required to purchase a new license plate for the passenger vehicle involved by paying the license tax of thirteen dollars and the issuance fee of seventy-five cents, under the same conditions as are enumerated by me in my answer to your second question.

7. As my answer to your fifth question is, in effect, in the affirmative, then there is no necessity for my answering your seventh question.

Very truly yours,

MacDONALD GALLION
Attorney General

December 8, 1969

Honorable William Roy Stokes
Attorney at Law
Brewton, Alabama 36426

Appropriations—County Boards of Education—Funds—Licenses —Municipalities—Schools—Taxes.

1. The funds derived from a municipal privilege license tax in the nature of a sales tax may be expended for any municipal purpose.

2. Under the facts presented such funds may be appropriated to a public school located within the county outside the municipality to which municipal residents are required to attend.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated October 16, 1969, is as follows:

"I am employed as City Attorney for the City of East Brewton, Alabama and a certain question has developed wherein the Mayor and Council of the City of East Brewton, Alabama requested that I ask your opinion.

"Several years ago a one cent sales tax was voted upon by the citizens of East Brewton to be used to support W. S. Neal School, which said school is located in the City of East Brewton, Alabama. The funds are disbursed from the City Hall upon proper requisition by the proper school officials of W. S. Neal School. Because of a recent Federal Court decision concerning segregated schools the W. S. Neal School became over crowded and approximately 200 students, the entire fifth and sixth grades, have been sent from W. S. Neal School to a former County colored junior high school. This school is approximately five miles from East Brewton, Alabama and is called the Oak Grove Community School. The officials of W. S. Neal School are now requesting that the Mayor and Council of the City of East Brewton furnish funds to support the Oak Grove School. The Mayor and Council would like to know whether they are within their legal authority to furnish financial support for this school to which the fifth and sixth grades have been sent. The Mayor and Council would further like to know whether or not they could be required to send a portion of these funds toward the support of the Oak Grove School."

You have informed me that both the W. S. Neal School and the Oak Grove Community School are operated by the Board of Education of Escambia County.

An examination of Ordinance No. 101 of the City of East Brewton, adopted May 7, 1959, which levies the tax to which your request refers was enacted by the Council of the City of East Brewton under the authority granted by Title 37, Chapter 15, Article 3, Code of Alabama 1940, Recompiled 1958. The tax levied is a municipal privilege license tax in the nature of a sales tax such as the one which was upheld in the case of **Al Means, Inc., et al. v. City of Montgomery, et al.,** 268 Ala. 31, 104 So. 2d 816.

Under the provisions of Article 3, supra, both the determination as to whether such a tax should be imposed and the determination as to the use of the funds derived therefrom is vested in the municipal council. The electorate cannot control the discretion of the council.

All municipal funds including those here considered must, of course, be expended for a municipal purpose. See **Johnson v. City of Sheffield, et al.,** 236 Ala. 411, 183 S. 265.

It is noted that under Section 11 of Ordinance No. 101, supra, the funds derived from the tax to which your request refers must be appropriated to the W. S. Neal School. If the Council of the City of East Brewton determines that the funds derived from this tax should be used for another purpose, Section 11, supra, would, of course, have to be amended by the said Council.

The Supreme Court of Alabama, in the case of **Carey v. City of Haleyville,** 230 Ala. 401, 161 So. 496, held that the governing body of a municipality has authority to expend public money in support of the public schools of the municipality even though title to the school buildings and lands is vested in the county board of education rather than in the municipality.

In an opinion reported in Quarterly Report of Attorney General, Volume 26, page 15, this office held that a municipality may make needed repairs and purchase equipment for local schools in the municipality where the title to the school buildings is in the county board of education and the schools are under the supervision and control of such board.

This office has held that a municipality may contribute funds to a public school located within its corporate limits for the purpose of constructing and equipping an athletic field on the school ground. Quarterly Report of Attorney General, Volume 52, page 141.

A municipality may furnish water free of charge for a public swimming pool located upon lands belonging to the county board of education and operated under the control and jurisdiction of such board. Quarterly Report of Attorney General, Volume 54, page 5.

In an opinion rendered to Honorable Dennis Porter, Town Attorney, Chatom, Alabama, under date of October 4, 1956, this office held that a municipality may appropriate funds to a county high school located within its corporate limits, such funds to be used to purchase musical instruments and uniforms for the high school band, provided that title to said musical instruments and uniforms shall remain in the school. See also Quarterly Report of Attorney General, Volume 111, page 39.

We have also held that a municipality may make appropriations from its general fund to supplement the salaries of teachers in schools operated by the County Board of Education within the corporate limits of the municipality. Quarterly Report of Attorney General, Volume 100, page 39.

You will note that each of the authorities cited hereinabove involve county schools located within the supporting municipality. However, under the facts presented by your request, I am of the opinion that the City of East Brewton may, within the discretion of its Council, appropriate funds to the Oak Grove Community School because of the fact that some of the students in said school are residents of said City who are forced to attend said school.

Premises considered, I am of the opinion that upon proper amendment of Ordinance No. 101, supra, a portion of the funds derived under said Ordinance may be appropriated by the City Council to the county school which is not located within the municipality. However, I am further of the opinion that said City Council may not be required to support said county school.

Very truly yours,

MacDONALD GALLION
Attorney General

December 9, 1969

Dr. Stonewall B. Stickney
Commissioner
Alabama Department of Mental Health
750 Washington Avenue
Montgomery, Alabama

State Department of Mental Health—Partlow State School and Hospital—Commitment Procedures.

Statutory commitment procedures require the judge of a juvenile court to determine whether a child can be received before ordering his commitment to Partlow State School and Hospital.

The acting superintendent of Partlow State School and Hospital is the legally constituted admitting officer for that institution.

Opinion by Assistant Attorney General Pettigrew.

Dear Dr. Stickney:

You asked for an official opinion in answer to the following question:

> "When the judge of a juvenile court wishes to commit a child to Partlow State School and Hospital under Title 13, Section 358, Code of Alabama 1940, Recompiled 1958, is the judge required to make application to the institution to determine whether the child can be received?"

Title 13, Section 358, Code of Alabama 1940, Recompiled 1958, provides that the juvenile court may proceed in the manner set out in Title 45, Sections 231-252, supra, to commit a child to Partlow State School and Hospital, if the court has reason to believe the child is within the class defined by Title 45, Section 236, supra, as mentally inferior, or defective, or feebleminded.

The commitment procedures established in the cited sections of Title 45 are for involuntary civil commitments to Partlow State School and Hospital; and Section 239, supra, specifically provides that the judge, before issuing an order of commitment and before arranging to have a child taken to Partlow State School and Hospital, shall first apply to that institution for admission of the child and shall receive notice that the child can be received, if he is a proper person within the class defined by statute.

Thus, statutory procedures clearly require the judge of a juvenile court to determine whether a child can be received before ordering his commitment to Partlow State School and Hospital.

There is, however, a point of reference in Section 239, supra, which needs to be clarified in terms of the effect of a subsequent statute. In providing for application to Partlow State School and Hospital, Section 239 directs the judge to apply to the "superintendent," which term is defined in a preceding section (Title 45, Section 233) to be the "superintendent of the Alabama insane hospitals." This reference must now be construed in relation to a subsequent statute which created the Alabama Mental Health Board and made the Alabama State hospitals and Partlow State School and Hospital subject to its jurisdiction and control. Act 881, Acts of Alabama 1965, Codified as Title 22, Sections 311-332, Code of Alabama 1940, Recompiled 1958.

Pursuant to the provisions of Act 881, the Alabama Mental Health Board has reorganized the State hospital services so that the Partlow facility for the mentally retarded is separate from the State hospitals

for the insane or mentally ill, and the Partlow facility is no longer under the authority of the "superintendent of the Alabama insane hospitals." Accordingly the term "superintendent" as it appears in Section 239 of Title 45 must now be construed to mean the acting superintendent of Partlow State School and Hospital; and any application for admission to the Partlow facility should be addressed to him as the legally constituted admitting officer.

In summary, then, Title 13, Section 358, supra, construed in conjunction with related statutes, manifestly requires the judge of a juvenile court to apply to the acting superintendent of Partlow State School and Hospital and to receive an affirmative reply before issuing an order for commitment of a child to that institution.

Very truly yours,

MacDONALD GALLION
Attorney General

December 16, 1969

Honorable Ray Bozeman
Clerk, Intermediate Court
Covington County
Andalusia, Alabama

Costs and Fees—Covington County—Clerks of Inferior Courts—Inferior Courts—Sentences—Statutes—Officers and Offices—Criminal Law.

1. Defendant convicted in Inferior Court not paying costs and fine should be sentenced in accordance with provisions of Title 15, Sections 341 and 342, Code of Alabama 1940, Recompiled 1958.

2. Circuit Clerk Ex-Officio Clerk of Inferior Court created subsequent to 1957 allowed justice of peace fees by act of creation may not claim fees from State under provisions of Title 45, Section 69, Code of Alabama 1940, Recompiled 1958.

3. Act creating Inferior Court and providing for payment of fees from fine and forfeiture fund in certain cases held not to be exclusive.

4. Fees of officers normally follow offense for which defendant convicted.

5. Where act creating court carries fees of justice court for case involving offense of which justice of peace has final

jurisdiction, fee of clerk follows offense for which defendant charged if offense is one over which justice of peace lacks jurisdiction.

6. Defendant may not be charged with costs when nolle prosequi entered or case dismissed.

7. Judge has no authority to waive or remit those costs and fees of court prescribed by statute in criminal cases.

8. When a mistrial necessitates a new trial, clerk is entitled to fees for both trials, payable in same manner as fees for final trial.

Opinion by Assistant Attorney General Webb.

Dear Mr. Bozeman:

I have your letter of October 24, 1969 in which you request my opinion as follows:

> "I would like to request your opinion pertaining to certain cost arising under the Jurisdiction of the Court of Record known as the Covington County Intermediate Court created by Act Number 45, Acts of Alabama 1967.
>
> "1. In Misdemeanor Cases where the defendant is found guilty and fined, may he be sentenced to hard labor for the County (if found insolvent) to pay cost? If your answer is in the affirmative, would the clerk and sheriff be due their fees from State Convict Fund? If so, would the Clerk be due the fees as set out in Title 45, Section 69, Code of Alabama 1940, (See Attorney General Opinion Vol. 104, page 17) as amended, as regards Ex Officio Fees, or would I be entitled to those fees accruing under Title 11, Section 96, Code of Alabama 1940, Recompiled 1958?
>
> "2. Act No. 45 (supra) makes no mention of defendants found 'Not Guilty' by the Court. Could I collect these items of cost from the fine and forfeiture fund?
>
> "3. Would I be entitled to costs of Justice of Peace under Title 11, Section 96, or of Ex Officio Clerks under Title 11, Section 89 (2) from cases originating under Title 14, Section 102 (1)?
>
> "4. If a defendant is arrested and charged with D.W.I. and subsequently on a plea of Guilty of Reckless Driving and on his plea the Judge finds him guilty of Reckless Driving and the Fine remains the same as if he had been convicted of D.W.I., would I be entitled to the fees of a D.W.I. Conviction or Reckless Driving?

"5. In cases where the defendant fails to appear and Judge orders a Forfeiture or if cases originating under Title 36, a Failure to Appear, and subsequently takes a Nolle Prosequi, may I go to the Fine and Forfeiture Fund for my fees in these cases?

"b. May the Judge take a Nolle Prosequi and waiver all cost as regards the sheriff's and the clerk's fees in cases originating by Affidavit and Warrant?

"c. Or if a Defendant is convicted of a Fradulent Check offense, may the Judge waiver the Solicitor's fees?

"6. Where a mistrial was declared in Circuit Court because of a hung jury and a new trial was given the defendant and the defendant was subsequently convicted and sentenced to the penitentiary, would I as Clerk of the Circuit Court be entitled to cost from the State for both cases as allowed by Attorney General opinion Vol. 35, page 106, if your answer is in the negative, could I get my cost from the Fine and Forefeiture fund?"

The Intermediate Court of Covington County was created under the provisions of Act No. 45, Acts of Alabama 1967, page 62. It is one of the many Inferior Courts of the State of Alabama having misdemeanor jurisdiction and preliminary jurisdiction in felony cases. Sections 341 and 342 of Title 15, Code of Alabama 1940, Recompiled 1958, provides for the sentencing of a convicted defendant upon his failure to pay the fine and costs. These two sections have been held to be applicable to all courts. See **State v. Judge,** 87 Ala. 46, 6 So. 328, and Biennial Report of Attorney General, 1930-32, page 931. The provisions of Title 13, Section 384, removing the jurisdiction of a justice of the peace or notary public ex officio justice of the peace to sentence to hard labor for non-payment of costs is applicable solely to justices of the peace and notaries public ex officio justices of the peace. I am, therefore, of the opinion that the Intermediate Court of Covington County may sentence a defendant to hard labor for costs. I am further of the opinion that the word "may," as used in Section 342 of Title 15, supra, means "must" and that a failure to sentence for costs subjects a case to remandment on appeal. See **Upshaw v. State,** 32 Ala. App. 360, 26 So. 2d 211, and **Fuller v. State,** 31 Ala. App. 324, 16 So. 2d 428.

I answer the second portion of your first question in the negative insofar as the clerk is concerned in each criminal case involving an offense of which justices of the peace have final jurisdiction except the offense of driving while intoxicated. The State is responsible for only those items and the specific rates set forth in Title 45, Section 69, Code of Alabama 1940, Recompiled 1958. See Biennial Report of Attorney General, 1920-22, page 348; Biennial Report of Attorney General, 1918-20, page 307; and Biennial Report of Attorney General, 1932-34,

page 165. Cf. informal opinion of Attorney General to Honorable John Graves, State Comptroller, dated February 18, 1960. In every other criminal case and in cases involving the offense of driving while intoxicated, I am of the opinion that you may file for cost to be paid by the State under the provisions of Title 45, Section 69, supra.

Section 8 (e) of Act No. 45, supra, provides for fine and forfeiture fund payments to be made in the following manner:

> "The fees of the Clerk of the Covington County Intermediate Court and Sheriff of said county in cases **where a nolle prosequi is ordered, or where cases are abated by the death of a defendant** shall be paid out of the fine and forfeiture fund of Covington County." (Emphasis supplied.)

Title 15, Section 393, Code of Alabama 1940, Recompiled 1958, provides, in pertinent part, as follows:

> " . . . the county treasurer of such county must pay the fees of the officers of the court arising from criminal cases in which the **defendant is not convicted** and the costs are not imposed on the prosecutor, or in which **defendants have been convicted, and have been proved insolvent** by the return of executions 'no property found,' **or in cases in which the state enters a nolle prosequi, or where the indictment has been withdrawn and filed, or the prosecution abated by the death of the defendant,** unless the payment or distribution of such funds are otherwise provided for . . . " (Emphasis supplied.)

Your second question, therefore, requires a determination as to whether Act No. 45, which provides for fine and forfeiture fund payment of fees of the officers in some cases, is exclusive and supersedes the provisions of Title 15, Section 393, supra. I also note in Act No. 45 that Section 17 contains a general repealer clause.

Normally, Acts of the Legislature will be considered in pari materia unless one is repugnant to the other or evidences a clear intent of the Legislature to repeal the other.

Title 11, Section 83, Code of Alabama 1940, Recompiled 1958, also provides for the payment of fees of the officers of the court from the fine and forfeiture fund except justices of the peace courts and courts created in lieu thereof with jurisdiction in criminal cases limited to the jurisdiction of a justice of the peace. Act No. 45 evidences criminal jurisdiction in the Intermediate Court exceeding that of the justice of the peace courts.

In my opinion, the particular provision of Section 8 of Act No. 45, supra, was probably put into the statute by the drafter for fear that the court might be considered as an inferior court in lieu of a justice of the peace court of like jurisdiction within the provision of Title 11, Section 83, supra. It does not, therefore, evidence the intent

of the Legislature with regard to payment of the fees of the officers from the fine and forfeiture fund and I am, therefore, of the opinion that you may collect your costs on not guilty cases from the fine and forfeiture fund under the provisions of Title 15, Section 393, supra.

With regard to your third question, there is no Section 102(1) of Title 14 in the Code. I am, therefore, unaware of the particular type of crime to which you are referring. However, in general answer to your question, I am of the opinion that, if the crime be an offense of which the justice of the peace would have final jurisdiction except the offense of driving while intoxicated, your fees would be the same as those provided for justices of the peace. In every other criminal case and in cases involving the offense of driving while intoxicated, Act No. 45 provides that your fees shall be the same as in Circuit Court.

Normally, the fees follow the offense for which the defendant is convicted. Cf. Quarterly Report of Attorney General, Volume 103, page 21. To digress from your specific fourth question, however, this office has held that in inferior courts, such as the Covington County Intermediate Court, having fees of a justice of the peace in those cases cognizable before a justice court that the offense charged and not the offense for which the accused is found guilty determines the schedule of fees to be used in such Inferior Court. Quarterly Report of Attorney General, Volume 54, page 95. The logical reason for this holding is that if a crime not cognizable before a justice of the peace is reduced in any degree, it still would not have been cognizable before the justice court in the original instance and it, therefore, follows that in any instance the fee of the higher court would be charged.

In specific response to your fourth question, however, a justice of the peace does have jurisdiction over driving while intoxicated cases. **Carter v. State,** 34 Ala. App. 181, 39 So. 2d 297, Cert. Den. 232 Ala. 26, 39 So. 2d 298. Even though the statute, Act No. 45, supra, sets forth different fees for this offense, it does not indicate the fee should necessarily follow the offense of charge on a conviction for a lesser offense. I am, therefore, of the opinion that in the specific instance given, the fee would follow the offense of conviction, i.e., reckless driving.

In your fifth question, you have dealt primarily with the problem of the judge remitting costs when a nolle prosequi has been entered. In this regard, your question presents two possibilities — first, the question of costs being assessed against a defendant when his case has been nol-prossed or dismissed. In this regard, your attention is invited to Quarterly Report of Attorney General, Volume 113, page 38. Court costs and fees are assessable against the defendant in a criminal case only upon his conviction. There is no authority of law for taxing costs in the event the case against the defendant is nol-prossed or dismissed. Note, also, those cases cited in the opinion in Volume 113, supra.

The second possibility raised by your question is that of the judge refusing to approve the clerk's and sheriff's fees being collected from the fine and forfeiture fund on nol-prossed cases or dismissed cases. In this regard, I might state that the judge has no authority to waive or remit those costs and fees of court prescribed by statute in criminal cases and, though the defendant himself is not responsible for those costs in the event the case has been dismissed, the clerk is still entitled to the costs from the fine and forfeiture fund. See Quarterly Report of Attorney General, Volume 54, page 95; Biennial Report of Attorney General, 1934-36, page 175; **Chisholm v. State,** 42 Ala. 529; and Corpus Juris Secundum, Costs, Section 460. With regard to the last portion of your fifth question, I would answer that, if a defendant is convicted in the case, the judge has no authority to waive or remit the solicitor's fees. See **Chisholm v. State,** supra.

With regard to your sixth question, I am of the opinion that when a mistrial necessitates a new trial the clerk, on completion thereof, is entitled to the fees for both trials to be paid in the same manner as the fees for the second and final trial are payable. Quarterly Report of Attorney General, Volume 35, page 106. In other words, if the case is one over which a justice of the peace would have jurisdiction, the fees would be payable from the fine and forfeiture fund on conviction with no property found.

Very truly yours,

MacDONALD GALLION
Attorney General

December 18, 1969

Honorable Harvey L. Rabren
Commissioner of Revenue
State of Alabama
Montgomery, Alabama

Boards of Equalization—Compensation—Salaries—Constitutionality—Constitutional Amendments.

1. Compensation of any public officer or officer holding any civil office of profit, in the absence of a constitutional amendment, cannot be increased or decreased during term for which he shall have been elected or appointed. Sections 68 and 281, Constitution of Alabama 1901 and Amendment 92, Constitution of Alabama 1901.

2. Amendment 103, Constitution of Alabama 1901, authorizes an increase or decrease in compensation during term of office of the members of the Chambers County Board of Equalization.

3. Members of county boards of equalization are "officers of the county" and hold "offices of profit."

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion dated December 2, 1969 is as follows:

"The 1969 Legislature passed a number of bills increasing the compensation of members of the various county boards of equalization. Three of the Acts of the Legislature required the State to participate in the payment of this increased salary. These Acts are as follows:

"1. House Bill No. 1062 (Act No. 1175) applies only to Tuscaloosa County and provides that the board of equalization be paid $25.00 per day for not more than 180 days and authorizes employment of a clerk stenographer and other necessary employees. Under this Act the State is required to pay one-third of the entire cost.

"2. House Bill No. 1106 (Act No. 837) applies only to St. Clair County and provides that the board of equalization shall meet not more than 180 days and members paid $15.00 per day. The State is to pay one-half of this cost.

"3. House Bill No. 705 (Act No. 338) applies only to Chambers County and provides that the members of the board of equalization shall receive pay of $20.00 per day, the State to pay one-half of this cost.

"No additional appropriation was made by the Legislature to take care of this additional cost, if these pay increases are constitutional. In fact, the Legislature reduced the appropriation for county boards of equalization salaries and their employees by $6,000. There is a question in my mind whether or not these Acts of the Legislature violate Section 68 and Section 281, and Amendment 92 of the Constitution of Alabama 1901.

"Amendment No. 103, Constitution of Alabama 1901, relates to Chambers County and I am informed that Chambers County is relying on this amendment to allow the increase in pay of the county board of equalization during their present term of office.

"Your official opinion is requested to determine if these Acts increasing salaries of members of the boards of equalization during their present term of office violate the Alabama Constitution. The present term of the members of the boards of equalization began October 1, 1967 and expires September 30, 1971."

House Bill No. 1062 (Act No. 1175) provided that said Act became effective on October 1, 1969. House Bill No. 1106 (Act No. 837) and House Bill No. 705 (Act No. 338) provided that they became effective immediately upon passage and approval by the Governor.

Section 68, Constitution of Alabama 1901, provides, in part, as follows:

> "The legislature shall have no power to grant or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant any extra compensation, fee or allowance to any public officer, servant, or employe, agent or contractor, after service shall have been rendered or contract made, nor to increase or decrease the fees and compensation of such officers during their terms of office, ... "

Section 281, Constitution of Alabama 1901, provides as follows:

> "The salary, fees, or compensation of any officer holding any civil office of profit under this state or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed."

Amendment No. 92, Constitution of Alabama 1901, proclaimed ratified May 16, 1952, provides, in part, as follows:

> "Any provisions of this Constitution or amendments thereto to the contrary notwithstanding, neither the legislature, nor any county of the state shall, by the imposition of new, different, and additional duties, or otherwise, increase, or authorize the increase of, the salary, fees or other compensation of any officer of the state or of any county of the state, who is elected or appointed for a fixed term, during the term for which he is elected or appointed, ... "

Boards of equalization constitute "offices" and the members thereof are "officers." In the case of **State v. Stone,** 240 Ala. 677, 200 So. 756, the Court stated:

> "Thus, the respective boards of revenue, boards of review and county boards of equalization are each 'offices' and their respective members are each 'officers,' functioning by legislative authority within their respective duties, authorities and powers, as defined and prescribed by law . . . . "

It has been held by this office that a member of a county board of equalization holds an office of profit. Quarterly Reports of the Attorney General, Volume 82, page 20, and Volume 115, page 90.

Insofar as I have been able to determine, there have been no amendments since Amendment 92, supra, to the Constitution of Alabama 1901, relating to an increase or decrease in an officer's compen-

sation in Tuscaloosa and St. Clair Counties. Therefore, the restrictions specified in Sections 68 and 281, Constitution of Alabama 1901 and Amendment 92 to the Constitution are applicable to Tuscaloosa and St. Clair Counties.

In view of the above, it is my opinion that the compensation of the members of the county boards of equalization of Tuscaloosa and St. Clair Counties cannot be and have not been by the Acts referred to in your request increased during the present term of office which expires September 30, 1971. Quarterly Report of the Attorney General, Volume 112, page 50. The increase provided for in the 1969 Acts pertaining to Tuscaloosa and St. Clair Counties will be applicable to the compensation paid the members of the boards of equalization in said counties during the term and subsequent terms beginning October 1, 1971. **State Docks Comm. v. State,** 227 Ala. 521, 150 So. 537; Quarterly Report of the Attorney General, Volume 20, page 95.

With respect to Chambers County, a different conclusion must be reached due to Amendment 103, Constitution of Alabama 1901, proclaimed ratified December 28, 1953. Amendment 103 provides, in part, as follows:

> "The legislature may from time to time by general or local laws applicable to or operative in Chambers county fix, alter, and regulate the costs and charges of court, and the fees, commissions, percentages, allowances, or salary of, any officer of Chambers county; may provide the method and basis of compensation of such officers; . . . "

As pointed out above, members of the county boards of equalization are "officers." Amendment 103, supra, applies to any "officer of Chambers County." Are members of the Chambers County Board of Equalization "officers of Chambers County"? Title 51, Section 88, as amended, Code of Alabama 1940, requires that each member of the county board of equalization "shall have been a resident of the county for at least five years in which he is to serve." The members are appointed by the Commissioner of Revenue from a list of nominees furnished by the court of county commissioners or other governing body of each county, the county board of education and the governing body of municipalities in each county in accordance with the provisions of Title 51, Section 89, Code of Alabama 1940. The jurisdiction of each county board of equalization is limited to each respective county. Therefore, it is my opinion that members of the Chambers County Board of Equalization are "officers of Chambers County."

The remaining question to be decided is whether or not Amendment 103 allows the compensation of members of the Chambers County Board of Equalization to be increased or decreased during the term for which they have been appointed. This question is answered in the case of **Almon v. Morgan County,** 245 Ala. 241, 16 So. 2d 511, wherein

it was held that a constitutional amendment authorizing the Legislature to alter salaries of named county officers including the Probate Judge of Morgan County "from time to time" authorized the Legislature to give immediate operation to a local act enacted pursuant thereto, though it might affect their salary during the term of the incumbents; the quoted phrase not meaning from "term to term" since that meaning would make the amendment add nothing. The Court stated:

> "There is no doubt but that an amendment to the Constitution is permissible whereby sections 68 and 281 are in substance so modified as not to prevent the immediate operation of the Local Act, supra, though to do so, would be opposed to them as thus expressed in the Constitution. Downs v. City of Birmingham, 240 Ala. 177, 198 So. 231.
>
> * * * * * * *
>
> "We revert to the question of the intent of the Legislature and people in ratifying the Amendment No. 44, supra, in respect to its effect on sections 68 and 281, as well as on section 96, Constitution.
>
> "It does not purport to amend any definite section of the Constitution. It is necessarily an amendment of the effect of section 96, supra. It confers the authority on the Legislature to alter the salaries of the county officers (naming among them the probate judges) 'from time to time.'
>
> * * * * * * *
>
> "As an independent proposition, when the amendment confers the right to be exercised 'from time to time' used in all of them, we think that some such effect must have been intended. It is argued that it means 'from term to term.' But to give it that meaning would make it add nothing. To do so from term to term did not infringe upon section 68 or 281. To have any meaning whatever, it meant to authorize such change to be repeated during the term of the incumbent. We fully recognize the salutary effect of a status where officers feel safe during their term against salary changes. The Legislature knew that also. And the Legislature prescribes the State's policy; the courts do not. These are local provisions. Some localities wanted the salary stability maintained; others did not. Either was permissible in a constitutional amendment. The choice was made by the Legislature and people at the election. Our province is only to give it effect as made."

Therefore, it is my opinion that the increase in compensation for members of the Chambers County Board of Equalization specified in Act No. 338, supra, became effective immediately upon the passage and approval of said Act even though such increase takes effect during the present term of office of the board which does not expire until September 30, 1971. Such increase in compensation during the term

of office of the members of the Chambers County Board of Equalization was authorized by Amendment 103, Constitution of Alabama 1901, and put into effect by Act No. 338, supra.

Very truly yours,

MacDONALD GALLION
Attorney General

December 19, 1969

Maj. Gen. Alfred C. Harrison
Adjutant General
State Military Department
Montgomery, Alabama

National Guard — Exemptions — Military Department — Juries.

All active members of the Alabama National Guard or Naval Militia, who present a proper certificate of such membership upon call to jury duty, must be excused from jury duty pursuant to Title 35, Section 11, Code of Alabama 1940.

Exemption from jury duty applies to all active members of the Alabama National Guard and Naval Militia for the entire duration of membership in such units, and is not confined to only periods of active duty or annual field training.

Opinion by Deputy Attorney General Bookout.

Dear General Harrison:

This is in reply to your request for an opinion of December 8, 1969 asking whether active members of the Alabama National Guard are exempt from jury duty. You further stated that an active member of the National Guard was not excused from jury duty in Shelby County recently and was told by an official of the Court that such an exemption only applies to personnel while on active duty (annual field training).

It is my opinion that Title 35, Section 11, Code of Alabama 1940, exempts from jury duty all officers and enlisted men of the National Guard and Naval Militia of Alabama for the entire duration of their active membership in the National Guard or Naval Militia.

The contention that the exemption only applies during time of actual training is inconsistent with the wording of Section 11, supra. That Section reads in pertinent part as follows:

> **"Owing to liability to call for military duty during their term of service,** every officer and enlisted man of the national guard and naval militia of Alabama shall be exempt from poll tax, road duty, street tax and jury duty during his active membership, any local or special laws to the contrary notwithstanding; . . . ." (Emphasis supplied.)

The underlined portion of the above-quoted section clearly shows that the exemption from jury duty is for the time such guardsmen are not on active duty. The stated purpose for enacting such statute was to make such guardsmen available for call to active duty at all times and to prevent the National Guard from having its members tied up on road duty or jury duty when their services may be needed for purposes of national defense, disaster, or emergency operations.

Likewise, by embodying an exemption from poll tax and street tax in the same sentence which grants the exemption from jury duty, it would clearly indicate that the Legislature did not intend to limit such exemptions only to the times when such guardsmen were actually on active duty.

It is my opinion that Section 11, supra, was enacted for two purposes. First, it was passed for the benefit of the National Guard by making its members readily available for call to active duty; and, secondly, it was in recognition for the great amount of time members of the National Guard spend during their weekends and summer vacations performing military service for the State and the Nation. The Legislature obviously felt that a guardsman who must lose time from his normal occupation to serve the State during time of disaster or other emergency should be relieved from the burden of losing additional time from his occupation to serve on a jury.

It is, therefore, my opinion that any active member of the National Guard of Alabama who presents to a Court a proper certificate of membership in the National Guard must be excused from jury duty.

Very truly yours,

MacDONALD GALLION
Attorney General

December 19, 1969

Colonel Floyd H. Mann, Director
Department of Public Safety
Public Safety Building
Montgomery, Alabama 36104

Department of Public Safety—Licenses—Alabama Chemical Test for Intoxication Act.

Alabama Chemical Test for Intoxication Act provides for period of suspension of ninety days for licensed resident drivers and non-resident drivers exercising privilege to drive in Alabama, and further provides that unlicensed resident drivers or resident drivers without an operator's permit shall be denied issuance of such license or permit for period of forty-five days.

Opinion by Assistant Attorney General Calhoun.

Dear Sir:

Your request for an official opinion of this office, dated November 5, 1969, is as follows:

"Section 1 (a) of Act No. 699 provides: Any person who operates a motor vehicle upon the public highways of this State shall be deemed to have given his consent, subject to the provisions of this Act, to a chemical test or tests of his blood, breath or urine for the purpose of determining the alcoholic content of his blood if lawfully arrested for any offense arising out of acts alleged to have been committed while the person was driving a motor vehicle on the public highways of this State while under the influence of intoxicating liquor. The test or tests shall be administered at the directions of a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor. The law enforcement agency by which such officer is employed shall designate which of the aforesaid tests shall be administered. Such person shall be told that his failure to submit to such a chemical test will result in the suspension of his privilege to operate a motor vehicle for a period of ninety (90) days provided, however, that if such person objects to a blood test, the law enforcement agency shall designate that one of the other aforesaid tests be administered.

"Should the suspension under Section 1 (a) be ninety (90) days or forty-five (45) days?

"Section 1 (b) of the same Act provides: Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this Section and the test or tests may be administered, subject to the provisions of this Act. (c) If a person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test designated by the law enforcement agency as provided in paragraph (a) of this section, none shall be given but the Director of Public Safety, upon the receipt of a sworn

report of the law enforcement officer that he had reasonable grounds to believe the arrested person had been driving a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor and that the person had refused to submit to the test upon the request of the law enforcement officer, shall suspend his license or permit to drive, or the privilege of driving a motor vehicle on the highways of this State given to a non-resident or if the person is a resident without a license or permit to operate a motor vehicle in this State, the Director shall deny to the person the issuance of a license or permit for period of **forty-five (45) days** after the date of the alleged violation, subject to review as hereinafter provided. Provided, further, if such person is acquitted on the charge of driving a motor vehicle upon the highways of this State while under the influence of intoxicating liquor, then in that event the Director of Public Safety may, in his discretion, reduce said period of suspension.
"Should the suspension under Section 1 (b) be ninety (90) days or forty-five (45) days?

"Section 3 of the same Act provides: Whenever and wherever the words 'driving privilege' or 'privilege' appear herein, it shall mean both the driver license of those licensed in Alabama, and the driving privilege of unlicensed residents and the privilege of non-residents licensed or not; the purpose of this section being to make unlicensed and non-resident drivers subject to the same penalties as licensed residents.
"Should the suspension under Section 3 be applied equally insofar as prohibiting a person operating the motor vehicle?" [Emphasis theirs.]

My answer to your first inquiry is that the plain wording of Section 1(a) of Act No. 699, Acts of Alabama 1969, as quoted in your request, provides that any person having a driving privilege operative in the State of Alabama, whether as a licensed resident of the State or as a non-resident with a mere privilege to drive in this State, shall have such driving privilege suspended for a period of ninety days.

My answer to your second inquiry is that Section 1(b) of Act No. 699 provides for no period of suspension. However, Section 1(c) of Act No. 699, as quoted in your request, provides that you shall suspend the license or permit to drive of a resident or the privilege of driving in this State given to a non-resident, this period of suspension being one of ninety days as set forth in Section 1(a), supra, and further provides that you shall deny to an unlicensed resident or resident without an operator's permit the issuance of such license or permit for a period of forty-five days from the day of the alleged violation bringing such person within the purview of this Act.

In answering your third inquiry, I am compelled to note that Section 3 of Act No. 699, as quoted in your request, declares that the purpose

of said Section 3 is " . . . to make unlicensed and non-resident drivers subject to the same penalties as licensed residents." Unquestionably, this declared purpose cannot be effectuated due to the clear meaning of the words contained in Sections 1(a) and 1(c), as detailed above.

I am of the opinion that no rule of statutory construction can be invoked in an attempt to provide equal penalties for unlicensed resident, non-resident, and licensed resident drivers in view of the wording of this Act.

It is well settled law that where the meaning of a statute is not obvious, resort must be had to statutory construction in an attempt to arrive at legislative intent. **Henry v. McCormack Bros. Motor Car Co.,** 232 Ala. 196, 167 So. 256, and cases cited in the Alabama Digest, Statutes, Key No. 181. It is equally well settled, however, that where the language of a statute is plain and unambiguous, there is no room for statutory construction, and the statute will be considered to mean precisely what it says. **Department of Industrial Relations v. Little Manufacturing Co., Inc.,** 253 Ala. 416, 44 So. 2d 587; **State v. Robinson Land and Lumber Co. of Alabama, Inc.,** 262 Ala. 146, 77 So. 2d 641; Quarterly Report of the Attorney General, Volume 113, page 50.

The plain and unambiguous wording of Sections 1(a) and 1(c), supra, is that licensed resident drivers and non-resident drivers shall be suspended for a period of ninety days and unlicensed resident drivers shall be denied the issuance of a license for a period of forty-five days. Accordingly, I am of the opinion that this language is to be considered to mean exactly what it says, and my answer to your third inquiry is that the declared purpose of Section 3, supra, that unlicensed resident, non-resident, and licensed resident drivers shall be subject to equal penalties cannot prevail in the face of the clear meaning of Sections 1(a) and 1(c).

Yours very truly,

MacDONALD GALLION
Attorney General

December 22, 1969

Honorable Marion H. Wilkins
Director,
State Highway Department
Montgomery, Alabama 36104

State and State Departments—Highways and Highway Department—Expenses—Employers and Employees.

Permanent State employees are entitled to reimbursement of actual expenses not to exceed $500.00 incurred in moving

when a transfer is made at the request of the employing State Department.

Opinion by Assistant Attorney General Tyson.

Dear Mr. Wilkins:

Your recent request for an official opinion of this office is as follows:

> "The Legislature recently passed Act No. 170, 1969 Regular Session, authorizing payment of moving expense for state employees except where such move is made at the employee's request.
>
> "Highway Department employees sometimes must move on account of receiving promotion, when selected from registers, to new locations throughout the State. Will you please advise whether the cost of such moves, on account of promotions, can be reimbursed."

Act No. 170, Acts of Alabama Legislature 1969, Sections 1-3, are as follows:

> "Section 1. A permanent employee of the State who moves from one community within the state to another by reason of transfer of job operation shall be entitled to receive reimbursement for his actual expenses, not to exceed five hundred dollars ($500.00), incurred in moving his household goods whenever such transfer is made at the request of the employing State department or agency. Such expense shall not be allowed when the transfer is made at the request of the employee.
>
> "Section 2. The Chief Executive Officer of the State department or agency is authorized to promulgate rules and regulations necessary to determine the eligibility of the employee for reimbursement of actual moving expenses, and the amount to be paid, not to exceed the sum of $500.00. Such rules and regulations may be amended, supplemented or changed at the discretion of the Chief Executive Officer of the State department or agency in keeping with the needs of his department. Such reimbursement may be made upon approval by the head of the State department or agency after the employee has been notified that his State department or agency is requiring his move; and after the head of his State department or agency has determined that such employee is eligible for reimbursement under the established rules and regulations of his particular department; and after submission of such evidence by the employee to the head of his State department or agency of cost as may be required by the rules and regulations established. Such moving cost paid to the employee hereunder

shall be paid out of the same fund of each such department or agency as payment for salaries and cost of administering the department or agency are paid.

"Section 3. The State shall not be held liable for any damages to person or property that may result from such moving of household goods."

In accordance with the foregoing Act, a permanent employee of the State who moves from one community to another in the State by reason of transfer of job shall be entitled to receive reimbursement of actual expenses not to exceed five hundred dollars ($500.00) **when such job transfer is made at the request of the employing State department or agency.** (Emphasis Supplied.)

You are further advised that in accordance with the above Act you are authorized to promulgate the necessary rules and regulations to determine the eligibility for such reimbursement. When the foregoing is carried out you are advised that the cost of moving on account of promotion may be reimbursed in accordance with the foregoing Act.

Yours very truly,

MacDONALD GALLION
Attorney General

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Section 11(Animal Cruelty) 7
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INFORMAL OPINIONS

During the period covered by this Quarterly Report of the Attorney General, October 1, 1969, through December 31, 1969, the Attorney General rendered the following informal opinions. These informal opinions are not published in the Quarterly Report.

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Municipalities—Licenses	C. B. Lockhart	Oct. 30	56
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BANKS AND BANKING:			
Small Loans—Courts	Elwood L. Hogan	Dec. 10	108
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CLERKS OF CIRCUIT COURTS:			
Bonds—Defaulting Sureties	L. W. Jinks	Oct. 9	16
COLLEGES AND UNIVERSITIES:			
Fraternity Construction—Public Works	David Matthews	Oct. 8	12
CORPORATIONS:			
Engineering Corporation—Illegal Acts	Sarah E. Hines	Nov. 11	Eng. & Land Surv.
Highway Department—Contract Execution, Agents	Marion H. Wilkins	Nov. 13	H'way
Public Corporate Shares—Pensions and Security, Sale	Ruben K. King	Oct. 10	Pen. & Secur.
Share Tax—Professional Associations	Louise S. Champion	Nov. 18	11

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Bids—Sand and Gravel	Maury Friedlander	Nov. 25	8
Bids—Variances	Raymond E. Faught	Oct. 20	39
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County Officials—Compensation	Joe J. Phillips	Dec. 5	32
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Hospital Board—Funds	Paul J. Hooton	Oct. 8	2
Hospital Board—Insurance Premiums	George W. Newburn, Jr.	Nov. 25	114
Hospital Board—Room Allocation	W. T. Steele	Nov. 24	113
Hospital Contract Liability	F. S. Hunt, Jr.	Nov. 6	76
Hospital Corporation—Dissolution	Morgan Reynolds	Nov. 5	52
Juvenile Court Judges—Meeting Expenses	Vivien O. Bagley	Dec. 23	119
Jefferson Barber Commission—Fiscal Year	J. G. Adams, Jr.	Dec. 9	106
Negotiated Contracts—Maximum Amounts	Mac Thomas	Dec. 11	110
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Sheriffs—Pistol Permits	Ray D. Bridges	Oct. 17	25
Sheriffs—Salaries	Walter D. Ritch	Nov. 19	87
Space Science Center—Appropriations	Ralph H. Ford	Nov. 18	79
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Tax Collectors—Offices	Luther D. Barnett	Oct. 15	40
Wallace Hospital Fund—Contributions	J. W. Oakley, Sr.	Nov. 14	83
Water Authority—Creation	Thomas L. Hammons	Dec. 10	104
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Noncommercial Shrimp Fishing	L. D. Owens, Jr.	Nov. 26	88
Oyster Beds—Dragging Trawls	R. O. Burgess	Oct. 22	34
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Vagrancy Statute—Constitutionality	Fred B. Simpson	Oct. 10	Dist. Atty.
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Garrett Act—Constitutionality	Mabel S. Amos	Nov. 14	Sec. St.

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School Tax—Election	Erskine S. Murray	Nov. 20	91
Taxes—Legislative Authorization	Robert E. Cunningham	Oct. 30	47
Voting Machines—Ballots	Frank T. Salter	Dec. 3	101
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Mortgage Tax—Leasehold Interest	John L. Moore	Nov. 11	48
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Contractor's Bond—Industrial Board	J. R. Brunson	Dec. 4	95
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Educational T.V. Commission—Other Offices	Melba Till Allen	Oct. 31	St. Aud.
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State Board—Alabama State University Appropriations	Ernest Stone	Dec. 3	Ed. Dept.
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Archives Department—Trustees Board	Milo B. Howard, Jr.	Dec. 2	Arch.
Board of Pharmacy—Travel Allowance	Dan A. Dennis, Jr.	Dec. 31	Bd. Phar.

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Expense Allowance—Collection	Melba Till Allen	Oct. 31	St. Aud.
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Jury Service—Daily Compensation	Arlis R. Fant	Oct. 22	Labor Dept.
Kilby Reservation—Sale or Transfer	R. G. Kendall, Jr.	Oct. 9	H'way
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Public Safety—Employee Retirement	Floyd H. Mann	Nov. 25	Pub. Saf.
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Sovereignty Commission—Printing Contract	Albert J. Winfield	Nov. 18	Forest Comm.
State Buildings—Funds	J. F. Manderson	Dec. 3	Civil Def.
State Employees—Military Leave	Howard F. Bolling	Dec. 9	102
State Foresters—Appointment	J. M. Stauffer	Nov. 18	Forest Comm.
Travel Allowance—Publicity Personnel	Martin J. Darity	Oct. 6	Pub. & Inf.
Veteran Officer—Appropriate Application	Walter C. Head, Jr.	Oct. 23	Vet. Aff.
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Muscle Shoals Council—Sales Tax	Harvey L. Rabren	Dec. 11	Rev. Dept.
Regional Planning Commission—Sales Tax	James E. Moore	Dec. 16	119
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